

2007 Assembly Bill 400

Date of enactment: **March 28, 2008**  
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## 2007 WISCONSIN ACT 200

AN ACT *to repeal* 20.465 (4) (b), 20.465 (4) (g), 20.465 (4) (k), chapter 21 (title), 21.025 (2) (b), 21.025 (5) (c), 21.025 (7), 21.025 (13), 21.15 (title), 21.155 (title), 21.19 (title), 21.19 (3) (b), 21.19 (6), 21.19 (7) (a) (intro.), 21.20, 21.21, 21.25, 21.26 (title), 21.32 (title), 21.33 (title), 21.36 (title), 21.37, 21.42, 21.49 (1) (ae), 21.50 (3) and (4), 21.56 (title), 21.57 (title), 21.59, 21.60, 21.61 (title), 21.612, 21.616 (title), 21.62, 21.63, 21.70 (title), 21.75 (1) (a), 21.75 (1) (c), 21.78 (5), 21.80 (1) (f) and 21.80 (8); *to renumber* 21.015 (1), 21.015 (3), 21.025 (title), 21.025 (2) (title), 21.025 (5) (title), 21.025 (11m) (title), 21.13 (title), 21.18 (title) and (1) (intro.), 21.18 (1) (a), 21.18 (1) (k), 21.18 (4), 21.26 (2) (b), 21.28 (title), 21.49 (title) and (1) (intro.), 21.49 (1) (am) and (ar), 21.49 (1) (b) (intro.), 21.49 (1) (b) 1., 1g. and 1m., 21.49 (1) (b) 3., 21.49 (2) (intro.), (a), (b) and (e), 21.50 (title), 21.51, 21.74 (8), 21.75 (1) (intro.), 21.75 (4), 21.75 (17), 21.75 (19), 21.80 (title) and (1) (intro.), 21.80 (1) (b) to (e), 21.80 (1) (g) and 21.80 (7); *to renumber and amend* 21.01, 21.015 (title), 21.015 (intro.), 21.015 (2), 21.025 (1), (2) (a), (c) and (d), (3), (4), (6), (8), (9), (10) and (11n), 21.025 (5) (a) and (b), 21.03, 21.04, 21.05, 21.06, 21.07, 21.09, 21.11 (title), 21.11 (1), 21.11 (2), 21.11 (3), 21.12, 21.13 (1), 21.13 (2), 21.15, 21.155, 21.17, 21.18 (1) (b), 21.18 (1) (c), 21.18 (1) (d), 21.18 (1) (e), (f), (g), (h), (i) and (j), 21.18 (1m), 21.18 (2), 21.18 (3), 21.18 (5), 21.19 (1), 21.19 (1m), 21.19 (2), 21.19 (3) (a), 21.19 (4), 21.19 (5), 21.19 (7) (a) 1., 21.19 (7) (a) 2., 21.19 (7) (a) 3., 21.19 (7) (b), 21.19 (8), 21.19 (9), 21.19 (10), 21.19 (11), 21.19 (12), 21.19 (13), 21.19 (14), 21.19 (15), 21.26 (2) (a), 21.28 (1), (2) and (3), 21.30 (title), 21.30, 21.32, 21.33, 21.35, 21.36 (1), 21.36 (2), 21.38, 21.43, 21.47, 21.48, 21.49 (1) (b) 2., 21.49 (1) (c), 21.49 (2) (d), 21.49 (2) (f), 21.49 (3), 21.49 (3m) and (4), 21.50 (1) and (2), 21.52, 21.54, 21.56 (1) and (2), 21.57 (1) and (2), 21.61 (1), (3), (4) and (5), 21.616, 21.70 (1) and (2), 21.72, 21.74 (title), 21.74 (1), 21.74 (2), (3), (4), (5), (6) and (7), 21.74 (9), 21.75 (title), 21.75 (1) (b), (cm) and (d), 21.75 (2), 21.75 (3), 21.75 (5), 21.75 (6) and (7), 21.75 (8), 21.75 (9) and (10), 21.75 (11), 21.75 (12), 21.75 (13), 21.75 (14), 21.75 (15), 21.75 (16), 21.75 (18), 21.75 (20), 21.75 (21), 21.75 (22), 21.75 (23), 21.78 (title), (1), (2), (3) and (4), 21.79, 21.80 (1) (a), 21.80 (2), 21.80 (3), 21.80 (4), 21.80 (5) and 21.80 (6); *to consolidate, renumber and amend* 21.025 (11m) (a) and (b) and 21.26 (1) and (2) (intro.); *to amend* 15.04 (2), 17.29, 20.455 (1) (b), 20.465 (1) (e), 20.465 (1) (g), 20.465 (1) (i), 20.465 (2) (a), 20.465 (4) (ka), 20.865 (1) (a), 20.865 (1) (g), 20.865 (1) (q), 40.05 (4g) (a) 4., 45.03 (13) (e), 45.20 (2) (d) 3., 45.60 (1) (b), 71.93 (1) (a) 6., 106.54 (7), 121.05 (1) (a) 13., 121.095 (title), 121.095 (1) (a), 121.095 (1) (b) 1., 121.90 (1) (intro.), 230.04 (17), 230.315 (1) (c) and 230.32 (7); *to create* 302.31 (1m), chapter 321 (title), subchapter I (title) of chapter 321 [precedes 321.01], 321.01, 321.02 (title), 321.04 (title) and (1) (intro.), 321.04 (1) (b), 321.04 (1) (j), 321.04 (1) (m), 321.04 (1) (p), 321.04 (2) (intro.), 321.04 (2) (f), subchapter II (title) of chapter 321 [precedes 321.10], 321.10 (1) (e), subchapter III (title) of chapter 321 [precedes 321.20], 321.21 (1), 321.23 (title), subchapter IV (title) of chapter 321 [precedes 321.30], 321.39 (1) (a) (intro.), 321.39 (1) (a) 3., 321.40 (2) (f), 321.40 (6) (d), 321.51 (2) (b), 321.51 (2) (e), subchapter V (title) of chapter 321 [precedes 321.60] and chapter 322 of the statutes; and *to affect* Laws of 1969, chapter 20, section 10; **relating to:** powers and duties of the Department of Military Affairs, the adjutant gen-

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\* Section 991.11, WISCONSIN STATUTES 2005-06 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

eral, military officers, military property and assets, the national guard, the state defense force, rights of service personnel, the Wisconsin code of military justice, making an appropriation, and providing a penalty.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

**SECTION 1.** 15.04 (2) of the statutes is amended to read:

15.04 (2) **DEPUTY.** Each secretary of a department or head of an independent agency under s. 230.08 (2) (L) may appoint a deputy who shall serve at the pleasure of the secretary or agency head outside the classified service. The deputy shall exercise the powers, duties and functions of the secretary or head in the absence of the secretary or head, and shall perform such other duties as the secretary or head prescribes. The adjutant general may appoint 2 deputies as ~~provided~~ described in s. ~~21.18 (1) 321.10 (1) (b) and (c).~~ In this subsection “secretary” includes the attorney general and the state superintendent of public instruction.

**SECTION 2.** 17.29 of the statutes is amended to read:

**17.29 Effect of chapter.** The provisions of this chapter supersede all contrary provisions in either the general law or in special acts, except ss. 6.26 (2) (b), 6.28 (2) (b), 6.55 (6), 6.875, and 7.30 relating to appointed election officials and ~~ch. 21 ch. 321~~ relating to the military staff of the governor and to officers of the Wisconsin national guard or state defense force; and shall govern all offices whether created by general law or special act, unless otherwise specially provided.

**SECTION 3.** 20.455 (1) (b) of the statutes is amended to read:

20.455 (1) (b) *Special counsel.* A sum sufficient, subject to the procedure established in s. 14.11 (2) (c), for the compensation of special counsel appointed as provided in ss. 14.11 (2) and ~~21.13~~ 321.42.

**SECTION 4.** 20.465 (1) (e) of the statutes is amended to read:

20.465 (1) (e) *State service flags.* The amounts in the schedule for the purchase of state service flags pursuant to s. ~~21.19 (10)~~ 321.04 (2) (d).

**SECTION 5.** 20.465 (1) (g) of the statutes is amended to read:

20.465 (1) (g) *Military property.* The amounts in the schedule for rent of state-owned military lands or buildings used by, acquired for or erected for the Wisconsin national guard under s. ~~21.19 (2)~~ 321.03 (2) (a), for rental of buildings and grounds maintenance equipment owned by the state and required to properly maintain properties supported by state-federal cooperative funding agreements, for the repair and maintenance of state-owned military lands or buildings, for the payment of municipal assessments related to state-owned military property and for the purchase and construction of new military property, real and personal. All moneys received on account of lost military property, from the sale of obsolete or

unserviceable military property, from the sale of any state-owned military property, real and personal, under s. ~~21.19 (3)~~ 321.03 (2) (b), from the rental of state-owned housing, or from the provision of housing-related services to military personnel shall be credited to this appropriation.

**SECTION 6.** 20.465 (1) (i) of the statutes is amended to read:

20.465 (1) (i) *Distance learning centers.* All moneys received from renting the distance learning centers, for the operation and maintenance of the centers under s. ~~21.19 (13)~~ 321.04 (1) (n).

**SECTION 7.** 20.465 (2) (a) of the statutes is amended to read:

20.465 (2) (a) *Tuition grants.* A sum sufficient for the payment of tuition grants to members of the Wisconsin national guard under s. ~~21.49 (3)~~ 321.40 (4).

**SECTION 8.** 20.465 (4) (b) of the statutes is repealed.

**SECTION 9.** 20.465 (4) (g) of the statutes is repealed.

**SECTION 10.** 20.465 (4) (k) of the statutes is repealed.

**SECTION 11.** 20.465 (4) (ka) of the statutes is amended to read:

20.465 (4) (ka) ~~Youth Challenge Academy program;~~ *Youth Challenge Academy program; public instruction funds.* All moneys received from the department of public instruction under s. 121.095, for the operation of the Youth Challenge Academy program under s. ~~21.26~~ 321.03 (1) (c).

**SECTION 12.** 20.865 (1) (a) of the statutes is amended to read:

20.865 (1) (a) *Judgments and legal expenses.* A sum sufficient to pay for legal expenses under s. 59.32 (3), for costs under ss. 227.485 and 814.245 and for the costs of judgments, orders and settlements of actions, appeals and complaints under subch. II of ch. 111 or subch. II or III of ch. 230, and those judgments, awards, orders and settlements under ss. ~~21.13~~, 165.25 (6), 321.42, 775.04 and 895.46 that are not otherwise reimbursable as liability costs under par. (fm). Release of moneys under this paragraph pursuant to any settlement agreement, whether or not incorporated into an order, is subject to approval of the attorney general.

**SECTION 13.** 20.865 (1) (g) of the statutes is amended to read:

20.865 (1) (g) *Judgments and legal expenses; program revenues.* From the appropriate program revenue and program revenue-service accounts, a sum sufficient to pay for legal expenses under s. 59.32 (3), for costs under ss. 227.485 and 814.245 and for the cost of judgments, orders and settlements of actions, appeals and complaints under subch. II of ch. 111 or subch. II or III of ch. 230, and those judgments, awards, orders and settlements under ss. ~~21.13~~, 165.25 (6), 321.42, 775.04

and 895.46 that are not otherwise reimbursable as liability costs under par. (fm). Release of moneys under this paragraph pursuant to any settlement agreement, whether or not incorporated into an order, is subject to approval of the attorney general.

**SECTION 14.** 20.865 (1) (q) of the statutes is amended to read:

20.865 (1) (q) *Judgments and legal expenses; segregated revenues.* From the appropriate segregated funds, a sum sufficient to pay for legal expenses under s. 59.32 (3), for costs under ss. 227.485 and 814.245 and for the cost of judgments, orders and settlements of actions, appeals and complaints under subch. II of ch. 111 or subch. II or III of ch. 230, and those judgments, awards, orders and settlements under ss. ~~24.13~~, 165.25 (6), 321.42, 775.04 and 895.46 that are not otherwise reimbursable as liability costs under par. (fm). Release of moneys under this paragraph pursuant to any settlement agreement, whether or not incorporated into an order, is subject to approval of the attorney general.

**SECTION 15.** Chapter 21 (title) of the statutes is repealed.

**SECTION 16.** 21.01 of the statutes is renumbered 321.30 and amended to read:

**321.30 Composition of national guard.** (1) The organized militia of this state shall be known as the "Wisconsin national guard" and shall consist of members ~~appointed~~ commissioned or enlisted therein in accordance with federal law or regulations governing ~~or pertaining to~~ the national guard.

(2) The Wisconsin national guard shall ~~be organized into~~ consist of the army national guard and the air national guard units, and "national guard" when used in this chapter, unless the context otherwise requires, means both the Wisconsin army national guard and the Wisconsin air national guard.

**SECTION 17.** 21.015 (title) of the statutes is renumbered 321.03 (title) and amended to read:

**321.03 (title) Department Powers and duties of the department.**

**SECTION 18.** 21.015 (intro.) of the statutes is renumbered 321.03 (1) (intro.) and amended to read:

321.03 (1) (intro.) The department ~~of military affairs~~ shall do all of the following:

**SECTION 19.** 21.015 (1) of the statutes is renumbered 321.03 (1) (a).

**SECTION 20.** 21.015 (2) of the statutes is renumbered 321.03 (1) (b) and amended to read:

321.03 (1) (b) Provide facilities and support for the national guard and ~~any other support available from the appropriations under s. 20.465.~~

**SECTION 20m.** 21.015 (3) of the statutes, as created by 2007 Wisconsin Act .... (Assembly Bill 370), is renumbered 321.03 (1) (d).

**SECTION 21.** 21.025 (title) of the statutes is renumbered 321.51 (title).

**SECTION 22.** 21.025 (1), (2) (a), (c) and (d), (3), (4), (6), (8), (9), (10) and (11n) of the statutes are renumbered 321.51 (1), (2) (a), (c) and (d), (3), (4), (5), (6), (7), (8) and (10) and amended to read:

321.51 (1) **AUTHORITY AND NAME.** The adjutant general may establish a plan for organizing a military force to be known as the Wisconsin state defense force. "state defense force." The governor, or adjutant general if designated by the governor, may organize the Wisconsin state defense force ~~under the plan, which may include an aviation unit,~~ if all or part of the national guard is called into ~~the service of the United States.~~ It federal active duty. The state defense force shall be a uniformed force distinct from the national guard, ~~uniformed, and~~ composed of ~~officers, commissioned or assigned, officers and~~ of enlisted personnel who volunteer for service. ~~Membership in the Wisconsin state defense force may not include any~~ A person who is on active duty in the active military U.S. armed forces, including the active reserve components, may not serve in the state defense force. Persons ~~A person~~ in the retired or inactive reserve may serve in the Wisconsin state defense force.

(2) (a) The governor or adjutant general, if designated by the governor, may prescribe rules and regulations ~~not inconsistent, instructions, and policies consistent~~ with this section governing the enlistment, organization, administration, equipment, uniforms, maintenance, training, and discipline of such forces, except that such rules and regulations, insofar as the state defense force. The regulations, instructions, and policies, to the extent the governor deems practicable and desirable considers necessary, shall conform to existing law governing and pertaining to the national guard and the rules and regulations promulgated thereunder and, The regulations, instructions, and policies shall prohibit the acceptance of a member of the state defense force from accepting any gifts, donations, gratuities, or anything other things of value by such forces or by any member of such forces from any person by reason of such membership given to the member because he or she is a member of the state defense force other than wages and benefits paid by the state.

(c) Officers and enlistees, while on state active duty ~~under orders of the governor, in~~ the state defense force shall receive the base pay and allowances of the identical grade in the United States U.S. army.

(d) The adjutant general may organize a ~~cadre force~~ recruitment and training unit of not more than 12 ~~personnel persons~~ at each state-owned state armory. ~~Each cadre force shall~~ The unit shall establish recruitment lists of persons interested in becoming members of the state defense force, ~~which may be used to recruit full units for the state defense force in case the national guard is mobilized for active federal duty, and train the persons recruited.~~

(3) REQUISITIONS; ARMORIES; OTHER BUILDINGS. ~~For the use of such forces, the~~ The governor or adjutant general, if designated by the governor, may requisition military property from the federal government such arms and equipment as may be available, and the for the use of the state defense force. The governor or adjutant general, if designated by the governor, may make available to the state defense force the facilities of state armories and their equipment and such military property and other state premises and property as may be available and may, through the, The department of military affairs, may rent or lease buildings or parts of buildings and grounds for armory purposes or continue in possession of such those premises leased by the department of military affairs for the use of the national guard, paying rental therefor out of funds appropriated rent from the appropriation under s. 20.465 (1) (a). All leases so made shall made under this subsection terminate upon dissolution of the Wisconsin state defense force regardless of the term provided therein in the lease, unless the premises shall be are needed for national guard purposes, in which case the, The lease for the premises needed for the national guard may be assigned by the department of military affairs to the national guard organization intending that intends to occupy the premises.

(4) USE WITHOUT OUTSIDE THIS STATE. ~~Such forces shall The state defense force may not be required to serve outside the boundaries of this state except unless one of the following applies:~~

(a) ~~Upon the request of the governor of another state, the governor of this state may order any portion or orders all or part of such forces the state defense force to assist the a military unit or police forces of such law enforcement agency of the other state who are actually engaged in defending such other state. Such forces may be recalled by the, The governor at the governor's discretion may recall the state defense force from the other state at any time.~~

(b) ~~Any organization, unit, or detachment of such forces, upon Upon order of the officer in immediate command thereof, may continue, the state defense force continues in fresh pursuit of insurrectionists, saboteurs, enemies terrorists, or enemy forces beyond the borders of this state into another state until they are apprehended or captured by such organization, unit, or detachment or until the a military unit or police forces law enforcement agency of the other state or the forces of the United States have had a reasonable opportunity to take up the pursuit or to apprehend or capture such those persons, provided such. Any pursuit under this subsection may only take place if the other state shall have given gives authority by law for such the pursuit by such forces of this state. Any such person who shall be apprehended or is captured in such the other state by an organization, unit, or detachment of the forces of this the state defense force shall without unnecessary delay be surrendered to the a mili-~~

~~tary unit or police forces law enforcement agency of the state in which the person is taken captured or to the United States, but such. The surrender of the person captured shall not constitute a waiver by this state of its the right to extradite or prosecute such the person for any crime committed in this state.~~

(5) FEDERAL SERVICE ACTIVE DUTY. ~~Nothing in this section shall be construed as authorizing such forces, or any part thereof to be called, ordered, or in any manner No unit of the state defense force may be drafted, as such, into the U.S. military service of the United States, but no, No person shall by reason of enlistment or commission in any such forces membership in the state defense force be exempted from military service under any law of the United States federal active duty.~~

(6) DISQUALIFICATIONS. ~~No person shall be commissioned or enlisted in such forces who is not a citizen of the United States or who has been expelled or dishonorably discharged from any military or naval organization; of this state, or of another state, or of the United States may be a member of the state defense force.~~

(7) OATH OF OFFICERS. ~~The oath to be taken by officers commissioned or enlistees in such forces the state defense force shall be substantially in the form prescribed for officers of the national guard. The oath shall be filed in the same manner as in the national guard.~~

(8) ENLISTEES. ~~No person shall may be enlisted in the state defense force for more than one year, but such enlistment may be renewed. The oath to be taken upon enlistment in such forces shall be substantially in the form prescribed for enlistees of the national guard.~~

(10) LABOR DISPUTES. ~~The state defense force shall may not be used to interfere with the orderly process of a labor dispute.~~

SECTION 23. 21.025 (2) (title) of the statutes is renumbered 321.51 (2) (title).

SECTION 24. 21.025 (2) (b) of the statutes is repealed.

SECTION 25. 21.025 (5) (title) of the statutes is renumbered 321.05 (title).

SECTION 26. 21.025 (5) (a) and (b) of the statutes are renumbered 321.05 (1) and (2) and amended to read:

321.05 (1) ~~Any military forces or organization, unit, or detachment thereof, of another state who are that is in fresh pursuit of insurrectionists, saboteurs, enemies terrorists, or enemy forces may continue such the pursuit into this state until the a military unit or police forces law enforcement agency of this state or the forces of the United States have U.S. military has had a reasonable opportunity to take up the pursuit or to apprehend or capture such persons, and such the persons. The military forces of such unit of the other state may arrest or capture such those persons within in this state while in fresh pursuit.~~

(2) ~~Any such person who shall be is captured or arrested by the military forces of such other unit of another state while in this state shall without unnecessary~~



delay be surrendered to the a military unit or police forces law enforcement agency of this state to be dealt with according to law.

**SECTION 27.** 21.025 (5) (c) of the statutes is repealed.

**SECTION 28.** 21.025 (7) of the statutes is repealed.

**SECTION 29.** 21.025 (11m) (title) of the statutes is renumbered 321.51 (9) (title).

**SECTION 30.** 21.025 (11m) (a) and (b) of the statutes are consolidated, renumbered 321.51 (9) and amended to read:

321.51 (9) Officers and enlistees of the “Wisconsin State Defense Force” state defense force who have served honorably therein for a period of at least one year and are active members of their respective units at the time of its demobilization shall may, upon application to the unit commander, be permitted to retain the items of their uniform prescribed by the governor by rule. (b) The. If retained, the uniform prescribed under par. (a) may be worn only on occasions of ceremony. “Occasions of ceremony” means occasions essentially of a military character at which the uniform is more appropriate than civilian clothing, such as memorial services, military weddings, military funerals, military balls, military parades, military reunions, and meetings or functions of associations formed for military purposes, the membership of which is composed largely or entirely of honorably discharged veterans of the services members of the U.S. military, national guard, and state defense force.

**SECTION 31.** 21.025 (13) of the statutes is repealed.

**SECTION 32.** 21.03 of the statutes is renumbered 321.20 and amended to read:

**321.20 Distribution of arms military property.** The governor may receive and distribute, according to law, the quota of arms and military equipment which property that the state may receive receives from the U.S. government of the United States under the provisions of any acts of congress federal laws providing for arming and equipping of the national guard and the state defense force.

**SECTION 33.** 21.04 of the statutes is renumbered 321.22 and amended to read:

**321.22 Camp Williams. (1)** The state camp grounds facility near Camp Douglas, Juneau County, shall be known as “Camp Williams”. The officer in charge of Camp Williams shall have at said camp the police powers possessed by officials at state hospitals, as provided in s. 46.058 (2) may arrest a person for a violation that occurs at Camp Williams of a state law, local ordinance, or provision of the Wisconsin code of military justice.

(2) The adjutant general may grant to the federal government the right to use any area of Camp Williams upon such conditions as that the adjutant general deems advisable.

(3) In memory of 1st lieutenant Jerome A. Volk, the first Wisconsin air national guard pilot killed in combat during the Korean conflict, so much of Camp Williams

as is under lease to the federal government for use of the air national guard shall be known as “Volk Field” during the time the property remains under lease to the U.S. government of the United States.

**SECTION 34.** 21.05 of the statutes is renumbered 321.32 and amended to read:

**321.32 Term of enlistment; requirements and discharge.** Every person who enlists or receives a commission in the national guard shall serve for the term prescribed and satisfy the physical, educational and training requirements prescribed by the U.S. national guard bureau. Enlistees in the national guard shall be discharged as provided in the laws and regulations of the U.S. national guard bureau.

**SECTION 35.** 21.06 of the statutes is renumbered 321.44 and amended to read:

**321.44 Exemptions from certain county duties.** Every member of the national guard or state military forces shall be defense force is exempt from service on any body of county residents summoned by the sheriff to assist in preserving the peace.

**SECTION 36.** 21.07 of the statutes is renumbered 321.38 and amended to read:

**321.38 Decorations and awards.** The adjutant general may prescribe decorations and awards for the national guard and the state defense force, the. The adjutant general shall adopt policies establishing the form and issue thereof made under rules adopted by the adjutant general and approved by the governor issuance of those decorations and awards.

**SECTION 37.** 21.09 of the statutes is renumbered 321.41 and amended to read:

**321.41 Training; special schools; pay and allowances.** The governor or adjutant general may order the national guard or state defense force to assemble for training at any military establishment within or without the state specified and approved by the department of defense and fix the dates and places thereof, and the of that training. The governor or adjutant general may order members of the national guard or state defense force, at their option, to attend such special schools for military training as may be that are authorized by the state or federal government. For such training and attendance at special schools, members The governor or adjutant general shall determine the amount that the members of the national guard or state defense force shall receive such as pay and allowances as the federal government or the governor may authorize for the training.

**SECTION 38.** 21.11 (title) of the statutes is renumbered 321.39 (title) and amended to read:

**321.39 (title) Call to state active service duty.**

**SECTION 39.** 21.11 (1) of the statutes is renumbered 321.39 (1) (a) 1. and amended to read:

321.39 (1) (a) 1. In case of war, insurrection, rebellion, riot, invasion, terrorism, or resistance to the execution of the laws of this state or of the United States; in,

2. In the event of public disaster resulting from flood, conflagration or fire, tornado, or other natural disaster.

4. In order to assess damage or potential damage and to recommend responsive action as a result of natural or man-made events; or upon an event listed in subds. 1. to 3.

5. Upon application of any marshal of the United States, the president of any village, the mayor of any city, the chairperson of any town board, or any sheriff in this state, the governor may order into active service all or any portion of the national guard.

(b) If the governor is absent, or cannot be immediately communicated with, any such civil officer of the persons listed in par. (a) 5. may, if the officer deems the occasion so is urgent, make such application, which shall be in writing, to request assistance from the commanding officers of any company, battalion or regiment, who may upon commander of any national guard unit. The commander shall obtain approval of the adjutant general, if the danger is great and imminent, order out that officer's command to the aid of such civil officer. Such before ordering the unit to provide assistance. If it is not feasible to obtain approval of the adjutant general, and the danger is great and imminent, the commander may order the unit to provide assistance without adjutant general approval. The order shall be delivered to the commanding officer, who shall immediately communicate the order to each, and every subordinate officer, and every company commander receiving the same who shall immediately communicate the substance thereof to each member of the order to the members of the company, or if any such unit. If a member cannot be found, a notice in writing containing the substance of such the order, in writing, shall be left at the last and usual member's place of residence of such member with some person of suitable age and discretion, to whom its the order's contents shall be explained.

**SECTION 40.** 21.11 (2) of the statutes is renumbered 321.39 (2) (a) and amended to read:

321.39 (2) (a) Any commissioned officer or enlisted member of the national guard who fails to carry out orders or fails to appear at the time or place ordered as provided in sub. (1) shall be punished under the Wisconsin code of military justice.

(b) Any person who advises or endeavors to persuade an officer or soldier to refuse or neglect to appear at such place or obey such order assists an officer or member of the national guard in violating par. (a) shall forfeit be subject to a forfeiture of not less than \$200 nor more than \$1,000.

**SECTION 41.** 21.11 (3) of the statutes is renumbered 321.04 (2) (e) and amended to read:

321.04 (2) (e) The adjutant general may activate Activate members of the national guard for the purpose of serving to serve on an honors detail of military funeral honors for a person described under s. 45.60 (1).

**SECTION 42.** 21.12 of the statutes is renumbered 321.43 and amended to read:

**321.43 Exemption from civil authority.** During the time the national guard or state military forces are defense force is performing military duty pursuant to proper under orders issued by the governor or by the governor's authority adjutant general, all of its members thereof, while going to, remaining at, or returning from a place of duty shall be are exempt from arrest or service of any process issued by a civilian court. In any civil or criminal prosecution against any member arising out of the member's performing military duty, it shall be a defense that the member was acting in good faith or pursuant to any under a lawful military order. Any such The order shall be deemed prima facie considered lawful unless shown to be unlawful.

**SECTION 43.** 21.13 (title) of the statutes is renumbered 321.42 (title).

**SECTION 44.** 21.13 (1) of the statutes is renumbered 321.42 (1) (a) and amended to read:

321.42 (1) (a) If any state resident who is a member of a the national guard of any state or of the state defense force or any resident of this state who is a member of the national guard of another state is prosecuted by any civil or criminal action for any act performed by the member while in the performance of military duty and in pursuance of military duty within the scope of his or her employment as a member, the action against governor, upon request of the adjutant general, shall appoint counsel to defend the member shall be defended by counsel, which may include the attorney general, appointed for that purpose by the governor upon the recommendation of the adjutant general. The adjutant general shall make the recommendation request to appoint defense counsel if the act performed by the member was in the line of duty. The governor may appoint the attorney general to defend the member.

(b) The costs and expenses of any such the defense under par. (a) shall be audited by the department of administration and paid out of the state treasury and charged to the appropriation under s. 20.455 (1) (b) and if. If the jury or court finds that the member of the national guard against whom the action is brought acted within the scope of his or her employment as a member, the judgment as to damages entered against the member shall also be paid by the state.

**SECTION 45.** 21.13 (2) of the statutes is renumbered 321.42 (2) and amended to read:

321.42 (2) Any civil action or proceeding brought against a member of a national guard or the state defense force under sub. (1) (a) is subject to ss. 893.82 and 895.46.

**SECTION 46.** 21.15 (title) of the statutes is repealed.

**SECTION 47.** 21.15 of the statutes is renumbered 321.21 (5) (a) and amended to read:

321.21 (5) (a) No person may retain at any time any ~~arms, equipment or military stores of any kind belonging to the state or any federally owned property issued to the state~~ property or money, unless the property or money has been lawfully issued to the person pursuant to law and the proper authority permits the person to retain the property or money in the discharge of a public duty. No person may use ~~any public arms, equipment, clothing or military stores belonging to the state, either as owner or bailee, property or money~~ for the person's unauthorized private use. Any person violating this section paragraph shall forfeit not less than \$50 \$100 nor more than \$200 \$1,000.

**SECTION 48.** 21.155 (title) of the statutes is repealed.

**SECTION 49.** 21.155 of the statutes is renumbered 321.21 (5) (b) and amended to read:

321.21 (5) (b) No A person who possesses ~~under the laws of this state any arms, equipment or other military property may willfully neglect or refuse~~ or money, after ~~the adjutant general makes lawful demand is made for the return of the property by order of the governor, to~~ or money shall return the property or money promptly. No person may knowingly resist any officer who is lawfully taking possession of such ~~arms, equipment or other the military property or money~~. Any person violating this section paragraph shall forfeit not less than \$50 \$100 nor more than \$200 \$1,000.

**SECTION 50.** 21.17 of the statutes is renumbered 321.24, and 321.24 (1) and (2), as renumbered, are amended to read:

321.24 (1) The officer in charge of any area used or to be used for military purposes may ~~cause the area to be marked in such a manner so as~~ mark the area to warn against encroachment by unauthorized persons, but may not ~~to~~ unnecessarily obstruct travel on any public highway. No person may encroach upon or enter upon the area without the consent of the officer.

(2) No person may ~~intercept, molest, abuse or otherwise interfere with any member of the national guard or any other military force organized under the laws of this state~~ defense force while the member is in the performance of military duty.

**SECTION 51.** 21.18 (title) and (1) (intro.) of the statutes are renumbered 321.10 (title) and (1) (intro.).

**SECTION 52c.** 21.18 (1) (a) of the statutes is renumbered 321.10 (1) (a).

**SECTION 52f.** 21.18 (1) (b) of the statutes is renumbered 321.10 (1) (b) and amended to read:

321.10 (1) (b) A deputy adjutant general for army, with a whose rank of may not exceed brigadier general, unless selected for a military position requiring federal recognition as a major general.

**SECTION 52m.** 21.18 (1) (c) of the statutes is renumbered 321.10 (1) (c) and amended to read:

321.10 (1) (c) A deputy adjutant general for air, with a whose rank of may not exceed brigadier general, unless

selected for a military position requiring federal recognition as a major general.

**SECTION 53.** 21.18 (1) (d) of the statutes is renumbered 321.10 (1) (d) and amended to read:

321.10 (1) (d) Two assistant adjutants general for army, ~~who may hold the~~ whose rank of may not exceed brigadier general.

**SECTION 54.** 21.18 (1) (e), (f), (g), (h), (i) and (j) of the statutes are renumbered 321.10 (1) (f), (g), (h), (i), (j) and (k) and amended to read:

321.10 (1) (f) An assistant adjutant general for air, ~~who may hold the~~ whose rank of may not exceed brigadier general.

(g) A chief surgeon for army, ~~who~~ whose rank may be a not exceed major general officer.

(h) A chief surgeon for air, ~~who~~ whose rank may be a not exceed major general officer.

(i) A staff judge advocate for army, ~~who~~ whose rank may be a not exceed major general officer.

(j) A staff judge advocate for air, ~~who~~ whose rank may be a not exceed major general officer.

(k) A state chaplain, either army or air, ~~who~~ whose rank may be a not exceed major general officer.

**SECTION 55.** 21.18 (1) (k) of the statutes is renumbered 321.10 (1) (L).

**SECTION 56.** 21.18 (1m) of the statutes is renumbered 321.10 (3) and amended to read:

321.10 (3) In the event ~~any of the a~~ deputy adjutants adjutant general, for army or for air, ~~are~~ is appointed to a military position as a major general, the adjutant general shall appoint, for any periods of absence of that deputy adjutant general due to other military duties, an acting deputy adjutant general. The adjutant general may appoint one of the assistant adjutants general as an acting deputy adjutant general.

**SECTION 57.** 21.18 (2) of the statutes is renumbered 321.10 (4) and amended to read:

321.10 (4) No person shall may be appointed ~~on to~~ the governor's military staff who has not had previous state or U.S. military experience.

**SECTION 58.** 21.18 (3) of the statutes is renumbered 321.10 (5) and amended to read:

321.10 (5) All staff officers appointed under sub. (1), except the adjutant general whose tenure is governed by ss. 15.31 and 17.07 (5), shall hold their positions unless until terminated ~~earlier~~ by resignation, disability, or death or for cause or unless federal recognition of the officer's commission under 32 USC 323 is refused or withdrawn. The governor shall remove an officer whose federal recognition is refused or withdrawn, effective on the date of the loss of federal recognition.

**SECTION 59.** 21.18 (4) of the statutes is renumbered 321.10 (6).

**SECTION 60.** 21.18 (5) of the statutes is renumbered 321.10 (7) and amended to read:

321.10 (7) The adjutant general shall appoint persons to fill vacancies in positions ~~in~~ on the military staff of the governor under sub. (1). Vacancies on the military staff of the governor shall be filled by appointment from officers actively serving in the national guard, except as provided in s. 15.31. Interim vacancies shall be filled by appointment by the adjutant general for the residue remainder of the unexpired term.

**SECTION 61.** 21.19 (title) of the statutes is repealed.

**SECTION 62.** 21.19 (1) of the statutes is renumbered 321.04 (1) (a) and amended to read:

321.04 (1) (a) ~~The adjutant general shall be~~ Be the military chief of staff to the governor. ~~The adjutant general shall have the custody of all property, military records, correspondence and other documents relating to the national guard and any other military forces organized under the laws of this state. The adjutant general may appoint an assistant quartermaster general to issue and account for state property. The adjutant general shall be the medium of military correspondence with the governor and perform all other duties pertaining to the office or prescribed by law, including the preparation and submission to the governor of reports under s. 15.04 (1) (d).~~

**SECTION 63.** 21.19 (1m) of the statutes is renumbered 321.04 (1) (i) and amended to read:

321.04 (1) (i) ~~The adjutant general shall administer~~ Administer, with the approval of the governor, state-federal cooperative funding agreements related to the department.

**SECTION 64.** 21.19 (2) of the statutes is renumbered 321.03 (2) (intro.) and amended to read:

321.03 (2) (intro.) ~~The department of military affairs on behalf of the state may rent~~ do any of the following:

(a) ~~Enter into an agreement to rent~~ to appropriate organizations or individuals state-owned lands, buildings, and facilities used by, acquired for, or erected for the national guard when not required for use by the national guard. ~~Such A rental shall agreement under this paragraph is not be effective unless in writing and approved in writing by the governor and the adjutant general or a his or her designee in writing.~~

**SECTION 65.** 21.19 (3) (a) of the statutes is renumbered 321.03 (2) (b) and amended to read:

321.03 (2) (b) ~~The department of military affairs on behalf of the state, upon~~ Upon appraisal by the state chief engineer submitted to the governor in writing, ~~may sell and convey upon such terms as the department of military affairs may determine, and with the written approval of the governor in writing~~ sell and convey, any state-owned property acquired or erected for state military purposes, ~~which if the property is no longer useful to the national guard.~~

**SECTION 66.** 21.19 (3) (b) of the statutes is repealed.

**SECTION 67.** 21.19 (4) of the statutes is renumbered 321.04 (1) (g) and amended to read:

321.04 (1) (g) ~~The adjutant general shall be the auditor of~~ Audit all military accounts, and all accounts or claims payable from the treasury of the state for military purposes ~~shall be regularly audited by the adjutant general before payment. The adjutant general shall cause to be prepared and issued all necessary books and forms required by the adjutant general's office for the national guard. All of the books and forms shall be made to conform as nearly as practicable to those in use in the United States army.~~

**SECTION 68.** 21.19 (5) of the statutes is renumbered 321.10 (2) and amended to read:

321.10 (2) In the absence or incapacity of the adjutant general, the senior ranking deputy adjutant general for army or air shall have all the powers and duties of the adjutant general.

**SECTION 69.** 21.19 (6) of the statutes is repealed.

**SECTION 70.** 21.19 (7) (a) (intro.) of the statutes is repealed.

**SECTION 71.** 21.19 (7) (a) 1. of the statutes is renumbered 321.04 (1) (f) and amended to read:

321.04 (1) (f) ~~Have charge of control over~~ all the military property ~~of the state and shall~~ military records and carefully preserve, repair, and account for the military property and records.

**SECTION 72.** 21.19 (7) (a) 2. of the statutes is renumbered 321.04 (1) (h) and amended to read:

321.04 (1) (h) ~~Keep in such manner as the governor directs, and subject to the governor's inspection, an account of all moneys received and expended by the department.~~

**SECTION 73.** 21.19 (7) (a) 3. of the statutes is renumbered 321.04 (1) (q) and amended to read:

321.04 (1) (q) Perform the customary duties of the his or her office, ~~and of the office of chief of all logistical services, and have the custody of all records, returns and papers pertaining to those offices.~~

**SECTION 74.** 21.19 (7) (b) of the statutes is renumbered 321.04 (1) (k) and amended to read:

321.04 (1) (k) ~~The Transport or contract for the transportation of all troops, arms, accoutrements, stores~~ national guard members and other military property and the preparation for encampments ~~shall be contracted for by the adjutant general under direction of the governor.~~

**SECTION 75.** 21.19 (8) of the statutes is renumbered 321.04 (1) (L) and amended to read:

321.04 (1) (L) ~~The adjutant general or a designee shall issue~~ Provide or contract for the provision of all necessary supplies to military property, lodging, and meals for members and units of the national guard ~~and may contract for the purchase and transportation of such supplies, subject to s. 16.71 (1).~~

**SECTION 76.** 21.19 (9) of the statutes is renumbered 321.04 (2) (c) and amended to read:



321.04 (2) (c) When any military property belonging to the state as owner or bailee is wrongfully held by another person, the adjutant general may bring an action in the name of the state to recover possession of the same property or the money value thereof of the property.

**SECTION 77.** 21.19 (10) of the statutes is renumbered 321.04 (2) (d) and amended to read:

321.04 (2) (d) The adjutant general may, upon receipt of a meritorious request, request for a state service flag for public use flag and within the limits of the appropriation made under s. 20.465 (1) (e), furnish such flags a flag without charge to the persons or organizations requesting them person who requested it.

**SECTION 78.** 21.19 (11) of the statutes is renumbered 321.04 (1) (d) and amended to read:

321.04 (1) (d) The adjutant general shall provide such Provide necessary medical supplies and services as are necessary to the national guard during periods of state active duty not otherwise provided under this chapter and ch. 102, to be charged to the appropriation under s. 20.465 (1) (c).

**SECTION 79.** 21.19 (12) of the statutes is renumbered 321.04 (1) (e) and amended to read:

321.04 (1) (e) The adjutant general shall provide from the appropriation under s. 20.465 (1) (c) Provide a United States flag or state flag to the next of kin of each deceased member of the national guard who dies as a result of during state service under s. 21.11 active duty, to be charged to the appropriation under s. 20.465 (1) (c).

**SECTION 80.** 21.19 (13) of the statutes is renumbered 321.04 (1) (n) and amended to read:

321.04 (1) (n) The adjutant general shall cooperate Cooperate with the federal government in the operation and maintenance of distance learning centers for the use of current and former members of the national guard and the U.S. armed forces. The adjutant general may charge rent for the use of a center by a nonmilitary or nonfederal person. All moneys received under this subsection paragraph shall be credited to the appropriation account under s. 20.465 (1) (i).

**SECTION 81.** 21.19 (14) of the statutes is renumbered 321.04 (1) (o) and amended to read:

321.04 (1) (o) The adjutant general shall provide Provide the department of veterans affairs information on all necessary military points of contact and general deployment information for activated and deployed members of the national guard.

**SECTION 81m.** 21.19 (15) of the statutes, as created by 2007 Wisconsin Act 46, is renumbered 321.04 (1) (r) and amended to read:

321.04 (1) (r) The adjutant general shall assist Assist national guard members who may have been exposed to depleted uranium in obtaining the best practice health screening test from the federal department of veterans affairs to test for exposure to depleted uranium using a

bioassay procedure involving methods sufficiently sensitive to detect depleted uranium at low levels.

**SECTION 82.** 21.20 of the statutes is repealed.

**SECTION 83.** 21.21 of the statutes is repealed.

**SECTION 84.** 21.25 of the statutes is repealed.

**SECTION 85.** 21.26 (title) of the statutes is repealed.

**SECTION 86.** 21.26 (1) and (2) (intro.) of the statutes are consolidated, renumbered 321.03 (1) (c) (intro.) and amended to read:

321.03 (1) (c) (intro.) The department of military affairs shall administer Administer the Youth Challenge Academy program for disadvantaged youth under 32 USC 509. (2) The department shall determine eligibility criteria for the Challenge Academy consistent with federal law. Annually, the department of military affairs shall do all of the following:

**SECTION 87.** 21.26 (2) (a) of the statutes is renumbered 321.03 (1) (c) 1. and amended to read:

321.03 (1) (c) 1. Calculate 40% the state share of the average cost per pupil attending the Youth Challenge Academy program and report this information to the department of public instruction.

**SECTION 88.** 21.26 (2) (b) of the statutes is renumbered 321.03 (1) (c) 2.

**SECTION 89.** 21.28 (title) of the statutes is renumbered 321.11 (title).

**SECTION 90.** 21.28 (1), (2) and (3) of the statutes are renumbered 321.11 (1), (2) and (3) and amended to read:

321.11 (1) The adjutant general shall recommend a candidate for appointment as the United States U.S. property and fiscal officer for the national guard, subject to the concurrence of the governor, from federally commissioned officers actively serving in the national guard. The candidate shall be nominated by the governor, subject to the concurrence of the U.S. secretary of the army, if the nominee is serving in the army national guard, or the U.S. secretary of the air force, if the nominee is serving in the air national guard.

(2) The officer nominated under sub. (1) shall assume the duties of a United States U.S. property and fiscal officer under 32 USC 708, when properly ordered to active duty by the appropriate U.S. secretary, on the date specified in the order. The officer shall hold his or her position unless terminated earlier by resignation, disability or for cause and unless federal recognition of the officer's commission under 32 USC 323 10 USC 14902, 14903, or 14905 is refused or withdrawn.

(3) Any action by the governor to remove the officer appointed under sub. (1) (2) for cause shall be governed by the federal laws and military regulations governing removal of an officer for cause and shall be subject to review by the chief of the national guard bureau and by the U.S. secretary of the army, if the officer is commissioned by the army national guard, or by the U.S. secre-

tary of the air force, if the officer is commissioned by the air national guard.

**SECTION 91.** 21.30 (title) of the statutes is renumbered 321.12 (title) and amended to read:

**321.12 (title) Chief surgeons; powers and duties.**

**SECTION 92.** 21.30 of the statutes is renumbered 321.12 (1) and amended to read:

321.12 (1) The chief surgeons for the army and air national guard shall, under direction of the adjutant general, have general supervision of the medical units of the national guard and, if organized, the state defense force when organized. The chief surgeons shall make recommendations concerning the procurement of medical supplies and services for state active duty operations, for the procurement and training of medical personnel, and for the publication of national guard directives on medical subjects. The chief surgeons shall submit an annual report of the affairs and expenses of their departments to the adjutant general.

**SECTION 93.** 21.32 (title) of the statutes is repealed.

**SECTION 94.** 21.32 of the statutes is renumbered 321.12 (2) and amended to read:

321.12 (2) The chief surgeons for the army and the air national guard shall provide for such any physical examinations and inoculations of officers, enlistees, and applicants for enlistment in the national guard, as may be that are prescribed by U.S. department of defense and national guard regulations.

**SECTION 95.** 21.33 (title) of the statutes is repealed.

**SECTION 96.** 21.33 of the statutes is renumbered 321.04 (1) (c) and amended to read:

321.04 (1) (c) The quartermaster general acting as paymaster under Under orders from the governor, may draw from the state treasury the money necessary for paying troops in camp or national guard members on state active service, and shall furnish such security for the same as the secretary of administration may direct. The amount due on account of the field, staff, or other officers, noncommissioned staff and band, company, or enlistees, not herein enumerated, if any, shall be paid to the person to whom the same shall be due, on the properly signed and certified payrolls duty.

**SECTION 97.** 21.35 of the statutes is renumbered 321.37 and amended to read:

**321.37 Federal laws and regulations; no No discrimination.** The organization, armament, equipment, and discipline of the national guard shall be that prescribed by federal laws or regulations; and the governor may by order perfect such organization, armament, equipment, and discipline, at any time, so as to comply with such laws and regulations insofar as they are consistent with the Wisconsin code of military justice. Notwithstanding any rule or regulation prescribed by the federal government or any officer or department thereof, no No person, otherwise qualified, may be denied membership in the national guard or state defense force because

of sex, color, race, creed, or sexual orientation and no member of the national guard or state defense force may be segregated within the national guard or state defense force on the basis of sex, color, race, creed, or sexual orientation. Nothing in this section prohibits separate facilities for persons of different sexes with regard to dormitory accommodations, public toilets, showers, saunas, and dressing rooms.

**SECTION 98.** 21.36 (title) of the statutes is repealed.

**SECTION 99.** 21.36 (1) of the statutes is renumbered 321.36 and amended to read:

**321.36 Rules of discipline.** The applicable rules of discipline and the regulations of the U.S. armed forces of the U.S. shall, so far as the same are applicable, constitute the rules of discipline and the regulations of the national guard; the, The rules and uniform code of military justice established by congress Congress and the U.S. department of defense for the armed forces shall be adopted so far as they are applicable and consistent with the Wisconsin code of military justice for the government of the national guard, and the, The system of instruction and the drill regulations prescribed for the different arms and corps of the armed forces of the U.S. shall be followed in the military instruction and practice of the national guard, and the use of any other system is forbidden.

**SECTION 100.** 21.36 (2) of the statutes is renumbered 321.04 (2) (a) and amended to read:

321.04 (2) (a) The governor may make and Make, publish, and have printed rules policies, regulations, and orders instructions for the government governance of the national guard, not inconsistent with the law, and cause the rules, regulations, or orders, together with any related laws, to be printed and distributed in book form, or another form, in any number that the governor considers necessary. The governor may provide,

(b) Provide for all books and forms that may be necessary for the proper discharge of the duty of all officers. The governor may delegate the authority under this subsection to the adjutant general by executive order of the national guard.

**SECTION 101.** 21.37 of the statutes is repealed.

**SECTION 102.** 21.38 of the statutes is renumbered 321.31 and amended to read:

**321.31 Uniform of Wisconsin national guard.** The uniform of the national guard shall be that as prescribed by regulations for the corresponding branch of the United States U.S. armed forces.

**SECTION 103.** 21.42 of the statutes is repealed.

**SECTION 104.** 21.43 of the statutes is renumbered 321.33 and amended to read:

**321.33 Commissions and rank.** The governor shall appoint and issue commissions to all officers whose appointments are approved by the governor. Every commission shall be countersigned signed by the secretary of state and attested by the adjutant general and, A commis- sion shall continue as provided by law unless terminated

earlier by resignation, disability, or for cause or unless federal recognition of the officer's commission under 32 USC 323 is refused or withdrawn. Each officer so commissioned officer shall take the oath of office prescribed by article IV, section 28, of the constitution and file it with the department of military affairs the oath of office prescribed by article IV, section 28, of the constitution. All commissioned officers shall take rank according to the date assigned them by their commissions, and when 2 of the same grade rank from the same date, their rank shall be determined by length of creditable service in the national guard creditable for pay, and if of equal creditable service then by lot.

**SECTION 105.** 21.47 of the statutes is renumbered 321.34 and amended to read:

**321.34 Examinations for promotion or appointments.** The governor or adjutant general may order any subordinate officer or person nominated or recommended for promotion or appointment in the national guard or state defense force to be examined by any competent officer or board of officers, designated in orders for that purpose, as to that person's qualifications for the office to which that person may is to be recommended or appointed, and or promoted. The governor or adjutant general may take such action on the report of such the examining officer or board of officers as the governor deems he or she considers to be for the best interests of the service national guard or state defense force. The governor or adjutant general may also require the person to take the physical examination provided for admission to the United States U.S. army or air force.

**SECTION 106.** 21.48 of the statutes is renumbered 321.35 and amended to read:

**321.35 Pay. (1)** Each Every officer and enlisted person of on state active duty in the national guard on active duty in the state under orders of the governor on a state pay basis shall receive the base pay and allowances of an officer or enlisted person of equal rank in the corresponding branch of the U.S. armed forces except that the base pay so provided shall not be less than \$50 per day.

(2) The governor may, by orders, duplicates of which shall be filed with the secretary of state, fix the pay of any member of the governor's staff military staff of the governor, or other members of the national guard or state defense force for any special service under orders state active duty.

(3) The governor may order, with their the member's consent, to state active duty in the department of military affairs, any departmental officers of the governor's staff, including the adjutant general and the deputy adjutants general, and while so a member of his or her military staff who is a state employee. The assigned the officers staff member shall receive the pay, but not the allowances, of an officer of equal grade in the U.S. armed forces of the United States.

**SECTION 107.** 21.49 (title) and (1) (intro.) of the statutes are renumbered 321.40 (title) and (1) (intro.).

**SECTION 108.** 21.49 (1) (ae) of the statutes is repealed.

**SECTION 109.** 21.49 (1) (am) and (ar) of the statutes are renumbered 321.40 (1) (a) and (b).

**SECTION 110.** 21.49 (1) (b) (intro.) of the statutes is renumbered 321.40 (1) (c) (intro.).

**SECTION 111.** 21.49 (1) (b) 1., 1g. and 1m. of the statutes are renumbered 321.40 (1) (c) 1., 2. and 3.

**SECTION 112.** 21.49 (1) (b) 2. of the statutes is renumbered 321.40 (1) (c) 4. and amended to read:

321.40 (1) (c) 4. Except as provided in subds. 4g. 2. and 4m. 3., an accredited institution of higher education located in this state, as defined in 20 USC 1002.

**SECTION 113.** 21.49 (1) (b) 3. of the statutes is renumbered 321.40 (1) (c) 5.

**SECTION 114.** 21.49 (1) (c) of the statutes is renumbered 321.40 (1) (d) and amended to read:

321.40 (1) (d) "Tuition grant" means any tuition cost reimbursement payment made by the department under sub. (3) (4).

**SECTION 115.** 21.49 (2) (intro.), (a), (b) and (e) of the statutes are renumbered 321.40 (2) (intro.), (a), (b) and (d).

**SECTION 116.** 21.49 (2) (d) of the statutes is renumbered 321.40 (2) (c) and amended to read:

321.40 (2) (c) Failing to meet the national guard service duty eligibility criteria established by the department or absent without leave for more than 9 unit training assemblies.

**SECTION 117.** 21.49 (2) (f) of the statutes is renumbered 321.40 (2) (e) and amended to read:

321.40 (2) (e) Failing to achieve a minimum grade point average of 2.0 or an average grade of "C" for the semester for which reimbursement is requested a tuition grant is applied for.

**SECTION 119.** 21.49 (3) of the statutes is renumbered 321.40 (3), and 321.40 (3) (a) and (b) 3., as renumbered, are amended to read:

321.40 (3) (a) Any eligible guard member upon satisfactory completion of a full-time or part-time course in a qualifying school is eligible for may apply for a tuition grant equal to 100% 100 percent of the actual tuition charged by the school or 100% 100 percent of the maximum resident undergraduate tuition charged by the University of Wisconsin-Madison for a comparable number of credits, whichever amount is less.

(b) 3. Contain the signatures of both the guard member claiming the grant and a representative of the school, certifying that the member has satisfactorily completed the course and has achieved the minimum grade point average or grade, as required under sub. (2) (f) (e).

**SECTION 120.** 21.49 (3m) and (4) of the statutes are renumbered 321.40 (4) and (5) and amended to read:

321.40 (4) REPAYMENT OF GRANTS. The department shall require a national guard member who has received a tuition grant under this section to repay the amount of the tuition grant to the department if the national guard member, ~~on or after September 1, 2001,~~ is separated from the national guard for misconduct, as defined in the rules and regulations of the national guard, including being absent without leave for more than 9 unit training assemblies. The department may elect to collect the amount owed under this subsection through the tax intercept program under s. 71.93.

(5) LIMITATIONS. (a) No guard member is eligible for benefits a tuition grant under this section for more than 120 credits of part-time study or 8 full semesters of full-time study or the equivalent thereof.

(b) If the U.S. congress establishes an active draft after July 1, 1977, no new tuition grants may be authorized under this section. The department shall determine if an active draft has been established. Any termination of the tuition grant program under this paragraph shall allow persons receiving grants prior to the establishment of an active draft to receive full benefits subject to sub. (3) (4) (d) and par. (a).

(c) No guard member may receive a tuition grant under sub. (3) (4) for any semester in which he or she received a payment under s. 45.20 (2).

SECTION 121. 21.50 (title) of the statutes is renumbered 321.21 (title).

SECTION 122. 21.50 (1) and (2) of the statutes are renumbered 321.21 (2) (a) and (b) and amended to read:

321.21 (2) (a) Each commanding officer ~~to whom state or federal~~ who is issued military property is issued may be required to execute to the state a bond, with such sureties and in such form and amount as the adjutant general shall approve, conditioned for the faithful preservation and care of all such arms, accoutrements, moneys, or stores that the officer received, to indemnify the state against loss by misuse or misapplication by the officer or any other person; ~~to or money shall~~ account for all of the same according to law, and to the property and money, deliver the same the property and money to any officer lawfully entitled thereto, on demand to receive them, and to pay all sums lawfully appraised for all losses or damages ~~to that property or money.~~

(b) The unit commander ~~is the legal custodian~~ has control of the money; ~~and military property and effects of any company-sized unit or detachment of the national guard, whether said the money or property is owned by said assigned to the unit or detachment or its members collectively, or has been issued to it or any of its officers, for its use, by the state or the United States authority, and, The unit commander may sue for and recover possession of the same money or military property, whenever it is wrongfully withheld from the unit commander's custody or the custody~~ control of the unit or detachment.

SECTION 123. 21.50 (3) and (4) of the statutes are repealed.

SECTION 124. 21.51 of the statutes is renumbered 321.13.

SECTION 125. 21.52 of the statutes is renumbered 321.14 and amended to read:

**321.14 Authority to administer oaths.** Any officer of the national guard or any officer of the U.S. armed forces may administer oaths of enlistment in the national guard.

SECTION 126. 21.54 of the statutes is renumbered 321.15 and amended to read:

**321.15 Resignation of officer.** A commissioned officer may resign the officer's his or her commission by submitting the written resignation to the officer's his or her immediate commanding officer, ~~in writing, who. The commanding officer~~ shall promptly forward the same resignation through military channels to the adjutant general. The governor shall, by order, accept or reject the same resignation, and, if accepted, fix the effective date of its taking effect. ~~No the resignation shall take effect except as so ordered.~~

SECTION 127. 21.56 (title) of the statutes is repealed.

SECTION 128. 21.56 (1) and (2) of the statutes are renumbered 321.21 (3) (a) and (b) and amended to read:

321.21 (3) (a) All state-owned military property or money issued to any officer or armory facility manager shall be audited annually as a part of the annual inspection of federal property accounts. When ~~damages~~ dam- age, other than ~~fair~~ reasonable wear and tear, or loss of state-owned property is discovered, the adjutant general shall appoint a surveying officer to determine the cause and fix blame. Upon review, the adjutant general may hold responsible individuals pecuniarily financially liable, ~~and may require a depreciated payment, as determined by the adjutant general, into the state treasury.~~ If it is determined that the property or money was damaged, destroyed or lost without fault or neglect on the part of those responsible, all concerned ~~may~~ shall be relieved of liability.

(b) Whenever any state-owned military property becomes unsuitable, unserviceable, or no longer required for military purposes, it shall be disposed of as surplus property subject to s. 16.72 (4) and (5).

SECTION 129. 21.57 (title) of the statutes is repealed.

SECTION 130. 21.57 (1) and (2) of the statutes are renumbered 321.21 (4) (a) and (b) and amended to read:

321.21 (4) (a) ~~Whenever any~~ When an officer who is responsible for state military property or money is separated or reassigned, all military property or money in the officer's possession or for which the officer is responsible shall ~~be delivered to become the responsibility of the person designated the adjutant general designates~~ to receive the property by the adjutant general or money.



No separation or reassignment shall be effective until all property accounts have been settled.

(b) ~~In case of the death of any~~ If an officer having custody control of state military property or money dies, the next in command shall immediately take charge of such the property or money and deliver the same the property or money to the person the adjutant general appointed to receive control the property by ~~the adjutant general or money.~~

**SECTION 131.** 21.59 of the statutes is repealed.

**SECTION 132.** 21.60 of the statutes is repealed.

**SECTION 133.** 21.61 (title) of the statutes is repealed.

**SECTION 134.** 21.61 (1), (3), (4) and (5) of the statutes are renumbered 321.23 (1) (a), (b), (c) and (d) and amended to read:

321.23 (1) (a) ~~The governing body of any city, village, town or county~~ A political subdivision or federally recognized Indian tribe or band in which one or more companies units of the national guard ~~may be is~~ located may erect build or purchase a suitable armory for the purpose of drill and for the safekeeping of ~~the arms, equipment, uniforms and other~~ military property furnished by the state, and for public meetings and conventions, when such that use will not interfere with the use of such the building by the national guard. Plans and specifications The adjutant general and the building commission may review and approve or reject plans and specifications for such the armories shall be inspected and approved by the ~~governor and the adjutant general who.~~ The adjutant general and the department of administration shall file with the governing body of the city, village, town or county political subdivision or the federally recognized Indian tribe or band a certificate of such inspection and approval prior to before the erection thereof construction of an armory.

(b) ~~The governing body of any city, village, town or county~~ A political subdivision or federally recognized Indian tribe or band in which any such company unit of the national guard ~~may be is~~ located may purchase land and build armories in the same manner as the governing body political subdivision or tribe or band is now authorized by law to build other city, village, town or county buildings, ~~and when.~~ When unable to agree upon the price of land with its owner, the political subdivision or federally recognized Indian tribe or band may, if in its opinion necessary, appropriate land for the purpose of building armories in the same manner as the governing body political subdivision or tribe or band is now authorized by law to appropriate real estate for other city, village, town or county buildings. ~~In case however~~ If a city, village, town or county shall have political subdivision or federally recognized Indian tribe or band aided in the erection building of an armory and the company or companies of the national guard for which the armory was erected ~~shall at any time be built is~~ disbanded, then the armory shall become the property of the city, village,

~~town or county in which political subdivision or tribe or band that aided in the building of~~ the armory is erected.

(c) Such The armory, when erected built or purchased, shall be under the control and charge of the governor, the adjutant general, and the commanding officer of the company or companies unit of the national guard for which it has been provided. The commanding officer shall ~~cause to be deposited therein,~~ deposit in the armory all arms, uniforms and equipment military property received from the governor and the adjutant general ~~who.~~ The adjutant general may make such rules as they deem proper for the observance of issue regulations, instructions, or policies to be followed by all officers and persons having charge of such the armories or occupying any part thereof of the armories.

(d) Whenever any county, city, town or village erects political subdivision or federally recognized Indian tribe or band constructs a building as a memorial to the soldiers, sailors and marines members of the U.S. armed forces or national guard who served in any war or armed conflict of the United States and makes provision therein in the memorial building for the accommodation of one or more companies of the national guard having no regularly established armory, the ~~governor, adjutant general or other state officers having control of armory accommodations and regulations~~ shall, whenever practicable, rent the armory provided in such the memorial building for the use of those companies of the national guard.

**SECTION 135.** 21.612 of the statutes is repealed.

**SECTION 136.** 21.616 (title) of the statutes is repealed.

**SECTION 137.** 21.616 of the statutes is renumbered 321.23 (2) and amended to read:

321.23 (2) The department of military affairs is authorized and directed may, when contributions therefor are made available by the federal government under the national defense facilities act of 1950 or any act or acts amendatory thereof or supplementary thereto, to federal law, expand, rehabilitate, equip, or convert facilities owned by the state and to acquire, construct, expand, rehabilitate, equip, or convert additional facilities. The department of military affairs may ~~on the part of the state~~ accept such the federal contributions in the manner prescribed by federal law or regulation, and may accept ~~on behalf of the state~~ the lawful terms and conditions thereof of a federal contribution. The department of military affairs shall take such steps and have all the functions and has the duties and powers necessary, consistent with the appropriation therefor, to acquire contributions under any such federal act law and to undertake and complete any such a project described in this subsection in conformity with the applicable federal act law and this section subsection.

**SECTION 138.** 21.62 of the statutes is repealed.

**SECTION 139.** 21.63 of the statutes is repealed.

**SECTION 140.** 21.70 (title) of the statutes is repealed.

**SECTION 141.** 21.70 (1) and (2) of the statutes are renumbered 321.02 (1) and (2) and amended to read:

321.02 (1) The governor may request volunteers of from the national guard to provide assistance to federal, state and local law enforcement officers, within or outside the boundaries of this state, in drug interdiction and counter-drug activities under 32 USC 112. These activities may include the operation and maintenance of equipment and facilities. The governor may order, with their consent, any national guard members who volunteer under this ~~section~~ subsection to duty in federally funded status. The governor may delegate his or her authority under this ~~section~~ subsection to the adjutant general. The adjutant general shall follow all laws and regulations of the U.S. department of defense when ordering national guard members to perform drug interdiction and counter-drug activities under this ~~section~~ subsection.

(2) A national guard member assisting in drug interdiction and counter-drug activities under this ~~section~~ subsection shall obey and execute the instructions of a law enforcement officer from the assisted agency involved in these activities that are given to the national guard member through the military chain of command.

**SECTION 142.** 21.72 of the statutes is renumbered 321.60, and 321.60 (1) (c), (2), (5) and (6), as renumbered, are amended to read:

321.60 (1) (c) "Service member" means a member of a reserve unit of the U.S. armed forces, a member of the state defense force, or a member of a national guard unit of any state who is a resident of Wisconsin.

(2) Any license that a service member holds, the expiration date of which is after September 11, 2001, except a license to practice law, does not expire on the expiration date of the license if, on the expiration date, the service member is on state active duty under ch. 21 or on active duty in the U.S. armed forces. If the supreme court agrees, a license to practice law that a service member holds, the expiration date of which is after September 11, 2001, does not expire on the expiration date of the license if, on the expiration date, the service member is on state active duty under ch. 21 or on active duty in the U.S. armed forces. A license extended under this subsection expires 90 days after the service member is discharged from active duty.

(5) ~~The department of military affairs shall assist any service member who needs assistance to renew or extend a license under this section.~~

(6) ~~The department of military affairs shall prepare and distribute to appropriate agencies and persons, at no cost to those agencies or persons, a brochure explaining the provisions of this section.~~

**SECTION 143.** 21.74 (title) of the statutes is renumbered 321.61 (title) and amended to read:

**321.61 (title) Soldiers and sailors Service members civil relief act for property taxes and mobile telephone contracts; federal service active duty.**

**SECTION 144.** 21.74 (1) of the statutes is renumbered 321.61 (1) (a) and amended to read:

321.61 (1) (a) In this ~~section~~ subsection, unless the context indicates otherwise:

1. "Interest and penalties" means interest and penalties accruing on taxes during the period of ~~military service~~ federal active duty and 6 months thereafter. In case several owners jointly own property, other than property held jointly or as marital property with the spouse of the person in ~~military service~~ federal active duty, interest and penalties means the proportionate share of the total interest and penalties commensurate with the equity in the property of the person in ~~military service~~ federal active duty.

2. "Person in ~~military service~~ federal active duty" means any man or woman who is serving ~~on~~ in ~~federal active duty in the U.S. armed forces, except service on active duty for training purposes for a period of 90 days or more.~~

3. "Property" means any real estate or personal property belonging to a person in ~~military service~~ federal active duty that was acquired prior to the commencement of ~~military service~~ the federal active duty or that was acquired by descent.

4. "Taxes" means any general property taxes or special assessments or tax certificates evidencing those taxes and assessments not belonging to private buyers.

**SECTION 145.** 21.74 (2), (3), (4), (5), (6) and (7) of the statutes are renumbered 321.61 (1) (b), (c), (d), (e), (f) and (g) and amended to read:

321.61 (1) (b) To supplement and complement the provisions of 50 App. USC 501, and to afford and obtain greater peace and security for persons in ~~military service~~ federal active duty, the enforcement of certain tax obligations or liabilities that may prejudice the property rights of persons in ~~military service~~ federal active duty may be temporarily suspended as provided in this ~~section~~ subsection.

(c) Any person ~~while in the military service of the United States~~ federal active duty or within 6 months after terminating service ~~that duty~~, or the person's agent or attorney during that period, may petition the circuit court of any county in which the person owns property for relief under this ~~section~~ subsection. Upon filing of the petition the court shall make an order fixing the time of hearing and requiring the giving of notice of the hearing. If after the hearing the court finds that the person is, or within 6 months next preceding the filing of the petition was, in ~~the military service of the United States~~ federal active duty and owns property within the county on which taxes have fallen or will fall due, and that the person's ability to pay the taxes has been materially adversely affected by reason of being in ~~military service~~ federal active duty, the court shall enter an order determining that the person is entitled to relief under this ~~section~~ subsection. The court may suspend proceedings for

the collection of taxes on the property for a period not exceeding 6 months after termination of the ~~military-service~~ federal active duty of the person, or for the time reasonably necessary to complete the agreement provided in ~~sub. (7) par. (g)~~. Thereafter, the property shall not be included in tax certificates issued to enforce collection of taxes on property, and all proceedings for that purpose shall be suspended, except under terms that the court may order.

(d) Whenever any tax or assessment on real property, including all special assessments, is not paid when due, any interest or penalty under s. 74.47 and the maximum limitation of 6 percent per year as provided under 50 App. USC 501 shall be waived for the purpose and under the conditions specified in this ~~section~~ subsection.

(e) The penalties and interest waived under this ~~section~~ subsection are those for nonpayment of all taxes or assessments, general or special, falling due during the period of ~~military-service~~ federal active duty of any person against either real or personal property of which the person is the bona fide owner or in which the person has an interest.

(f) The person owning or having an interest in any property in respect to which the order under ~~sub. (3) par. (c)~~ is made, or the person's agent or attorney, may file a certified copy of the order of suspension with the county treasurer or with the city treasurer of cities authorized by law to sell lands for the nonpayment of taxes as to the taxes and assessments. The person shall file with the order an affidavit in triplicate, sworn to by the person or agent or attorney, setting forth the name of the owner, the legal description of the property, the type of property, when acquired, volume and page number where the deed was recorded if acquired by deed, and the name of the estate if acquired by descent, amount of delinquent taxes if any, and the names of the holders of any outstanding mortgage, lien, or other encumbrance. Upon receipt of the filing, the county treasurer or city treasurer shall record the order in the office of the register of deeds of the county and file a copy in the office of the treasurer, who shall make proper notation that a person in ~~military-service~~ federal active duty is the holder of the legal title and has made application for special relief. The county treasurer or city treasurer shall immediately forward an additional copy of the order and affidavit to the office of the clerk of the town, city, or village where the property is located, or if it is located in a city, authorized to sell lands for nonpayment of its taxes, to the commissioner of assessments, who shall make an appropriate notation in the records.

(g) Any person seeking relief under this ~~section~~ subsection, within 6 months after termination of ~~military-service~~ federal active duty, or the person's agent or attorney, or in case of death of the person, the personal representative, surviving spouse, or heir, may apply to the county treasurer of the county, or the city treasurer of a city

authorized by law to sell lands for the nonpayment of taxes, where the property is located, for an agreement for scheduled installment payments, covering the taxes accrued during the person's period of ~~military-service~~ federal active duty, provided that the taxes will be paid over a period of time equal to a period no longer than twice the length of ~~military-service~~ federal active duty of the person, in equal periodic installments of not less than \$10, and subject to any other terms as may be just and reasonable.

**SECTION 146.** 21.74 (8) of the statutes is renumbered 321.61 (1) (h).

**SECTION 147.** 21.74 (9) of the statutes is renumbered 321.61 (2), and 321.61 (2) (a) 2., (b) 1., (c) and (g), as renumbered, are amended to read:

321.61 (2) (a) 2. "Contract" means an agreement between a person in ~~military-service~~ federal active duty and a mobile telephone service provider that requires the person in ~~military-service~~ federal active duty to pay the mobile telephone service provider a monthly fee in exchange for the use of a mobile telephone.

(b) 1. The contract was executed by or on behalf of a person in ~~military-service~~ federal active duty who entered federal active ~~military~~ duty after the contract was executed.

(c) A person in ~~military-service~~ federal active duty may suspend or terminate a contract to which this subsection applies without any penalties or additional fees at any time after the ~~service-member~~ person in federal active duty has been issued orders into federal active duty by giving written notice to the mobile telephone service provider. The ~~service-member~~ person in federal active duty shall include a copy of the orders into federal active duty as part of the notice. The notice may be given by 1st class mail to the address provided in the agreement with the mobile telephone service provider or provided in the mobile telephone service provider's billing statement or by delivering the notice to the mobile telephone service provider's branch office.

(g) If a mobile telephone service provider assesses a person in ~~military-service~~ federal active duty any penalty or fee after the person has suspended or terminated the contract under par. (c) or fails to make any refund required under par. (e), the ~~service-member shall have the right to~~ person in federal active duty may bring an action for damages. If the ~~service-member~~ person in federal active duty prevails in an action brought under this paragraph, the court shall order the mobile telephone service provider to pay the service member exemplary damages of \$2,000.

**SECTION 148.** 21.75 (title) of the statutes is renumbered 321.62 (title) and amended to read:

**321.62 (title) Soldiers' and sailors' Service members civil relief act; state service active duty.**

**SECTION 149.** 21.75 (1) (intro.) of the statutes is renumbered 321.62 (1) (intro.).

**SECTION 150.** 21.75 (1) (a) of the statutes is repealed.

**SECTION 151.** 21.75 (1) (b), (cm) and (d) of the statutes are renumbered 321.62 (1) (a), (b) and (c) and amended to read:

321.62 (1) (a) “Court” means a Wisconsin circuit court of record, a Wisconsin court of appeals, or the Wisconsin supreme court.

(b) “Period of active state service active duty” means the period beginning on the date on which the service member receives an order to enter state active state-service duty and ending on the date of the service member’s release from state active state-service duty or death while in on state active state-service duty.

(c) “Service member” means a resident of this state member of the national guard or state defense force who may be called is ordered into active state service active duty for 30 days or more.

**SECTION 152.** 21.75 (1) (c) of the statutes is repealed.

**SECTION 153.** 21.75 (2) of the statutes is renumbered 321.62 (2), and 321.62 (2) (b) and (c), as renumbered, are amended to read:

321.62 (2) (b) If a service member is the principal on a criminal bail bond and his or her active state service active duty causes the surety upon the bond to be prevented from enforcing the attendance of the service member at court, the court shall not enforce the provisions of the bond during the service member’s period of active state service active duty and may either during or after the period of state active service duty discharge the surety and exonerate the bail.

(c) A surety, guarantor, endorser, or other person subject to the obligation, liability, court action, order, writ, or judgment under par. (a) or (b) may waive in writing the rights afforded by this subsection, except that the waiver is not valid unless the waiver is executed as an instrument separate from the obligation, liability, court action, order, writ, or judgment. The waiver under this paragraph is not valid after the beginning of the period of active state service active duty if executed by a service member who subsequently is called ordered into active state service active duty. The waiver under this paragraph is not valid if executed by a dependent of a service member unless the waiver is executed during the period of active state service active duty.

**SECTION 154.** 21.75 (3) of the statutes is renumbered 321.62 (3) and amended to read:

321.62 (3) EFFECT ON RIGHTS UNDER A WRITTEN AGREEMENT. This section does not prevent the modification, termination, or cancellation of any contract, lease, bailment, or secured obligation, or the repossession, retention, foreclosure, sale, or forfeiture of property that is security for any obligation or which has been purchased or received under a contract, lease, or bailment under a written agreement of the parties if that agreement is executed during or after the period of active state service active duty.

**SECTION 155.** 21.75 (4) of the statutes is renumbered 321.62 (4).

**SECTION 156.** 21.75 (5) of the statutes is renumbered 321.62 (5), and 321.62 (5) (a) and (b) (intro.) and 1., as renumbered, are amended to read:

321.62 (5) (a) If, in any court action, there is a default of any appearance of the defendant, the plaintiff, when requesting a default judgment, shall file with the court an affidavit setting forth facts showing that the defendant is not in active state service active duty. If the plaintiff is unable to file such an affidavit, the plaintiff shall, when requesting a default judgment, file an affidavit setting forth that the defendant is in active state service active duty or that the plaintiff is unable to determine if the defendant is in active state service active duty. If an affidavit is not filed showing that the defendant is not in active state service active duty, a default judgment may not be entered without a court order. A court may not order the entry of a default judgment if the defendant is in active state service active duty until the court has appointed an attorney to represent the defendant and protect the defendant’s interests. Unless the court determines that the defendant is not in active state service active duty, the court may require, as a condition of entering judgment, the plaintiff to file a bond to indemnify the defendant, if he or she is in active state service active duty, against any loss or damage resulting from the judgment if any part of the judgment is later set aside. The court may make any other order as may be necessary to protect the interests of the defendant under this section.

(b) (intro.) If a judgment is rendered in a court action against a service member during the period of active state service active duty or within 30 days after the end of that period of active state service active duty, and it appears that the service member was prejudiced in making a defense by reason of his or her active state service active duty, the court may reopen that judgment if all of the following conditions exist:

1. The service member moves the court to reopen the judgment within 90 days after his or her period of active state service active duty ends.

**SECTION 157.** 21.75 (6) and (7) of the statutes are renumbered 321.62 (6) and (7) and amended to read:

321.62 (6) STAY OF ACTION. During any stage of a court action in which a service member in active state service active duty is involved as a party, or within 60 days after the end of the period of active state service active duty, the court in which the action is pending may on its own motion, and shall, on application of the service member or some person acting on behalf of the service member, stay the action unless the court determines that the service member’s ability to represent his or her interest in the action is not materially affected by reason of his or her active state service active duty.

(7) STAY OR VACATION OF EXECUTIONS OR ATTACHMENTS. In any court action that is commenced against a



service member before or after entering active state service active duty, or within 60 days after the period of active state service active duty ends, the court may on its own motion, and shall, on application of the service member or some person acting on behalf of the service member, stay the execution of any judgment or order entered against the service member, or stay or vacate any attachment or garnishment regarding the service member's property, unless the court determines that the service member's ability to comply with the judgment or order is not materially affected by reason of his or her active state service active duty.

**SECTION 158.** 21.75 (8) of the statutes is renumbered 321.62 (8), and 321.62 (8) (a), as renumbered, is amended to read:

321.62 (8) (a) Any stay of any action, attachment, execution, or garnishment under this section may be ordered for the period of the active state service active duty and ~~3 months~~ 90 days after that period has ended, or for any part of that time.

**SECTION 159.** 21.75 (9) and (10) of the statutes are renumbered 321.62 (9) and (10) and amended to read:

321.62 (9) STATUTES OF LIMITATIONS. The period of active state service active duty may not be included in computing any period for the bringing of any action or proceeding in any court or before any public agency, as defined in s. 36.54 (2) (a) 2., by or against a person in active state service active duty or by or against his or her heirs, personal representatives, or assigns, whether the cause of action or proceeding or the right to bring the action or proceeding accrued before or during the period of active state service active duty.

(10) MAXIMUM INTEREST RATE. No obligation or liability bearing interest at a rate in excess of ~~6%~~ 6 percent per year incurred by a service member in active state service active duty before his or her entry into that service duty may, during any part of the period of active state service active duty, bear interest in excess of ~~6%~~ 6 percent per year except by court order. If, upon application by an obligee, a court determines that the ability of the service member to pay interest upon the obligation or liability at a rate in excess of ~~6%~~ 6 percent per year is not materially affected by reason of his or her active state service active duty, the court may make any order that is just. In this subsection, "interest" includes service charges, renewal charges, fees, or other charges, other than insurance, in respect to the obligation or liability.

**SECTION 160.** 21.75 (11) of the statutes is renumbered 321.62 (11), and 321.62 (11) (a) and (b), as renumbered, are amended to read:

321.62 (11) (a) No eviction may be made during the period of active state service active duty in respect to any premises for which the agreed rent does not exceed ~~\$1,200 per month~~ the amount specified in 50 USC App. 531, occupied chiefly for dwelling purposes by the spouse, children, or other dependents of a service mem-

ber who is in active state service active duty, except upon order of a court in an action affecting the right of possession.

(b) In an action for eviction under par. (a), the court may on its own motion, and shall, on application of the service member or some person acting on behalf of the service member, stay the proceedings for not longer than ~~3 months~~ 90 days unless the court determines that the ability of the tenant to pay the agreed rent is not materially affected by the active state service active duty. The court may make any other order in the eviction action as it considers necessary and just. If a stay or order is issued under this paragraph, the court may, upon the request of the owner of the premises, make any other order as may be applicable to conserve the interests of all of the parties.

**SECTION 161.** 21.75 (12) of the statutes is renumbered 321.62 (12), and 321.62 (12) (a), (b) (intro.) and (c) 1., as renumbered, are amended to read:

321.62 (12) (a) In this subsection, "obligation" means an obligation of a service member in active state service active duty that was incurred before the service member's period of active state service active duty began and that is secured by a mortgage, deed of trust, or other security in the nature of a mortgage on real or personal property that is owned by the service member.

(b) (intro.) If a court action against a service member is commenced during the service member's period of active state service active duty to enforce an obligation for nonpayment of any sum due or for any other breach of terms occurring before or during the service member's period of active state service active duty, the court shall hold a hearing on the matter. Unless the court determines that the service member's ability to comply with the terms of the obligation is not materially affected by reason of his or her active state service active duty, the court on its own motion may, or upon application of the service member or another person on his or her behalf shall, do any of the following:

(c) 1. Notwithstanding the times provided in ss. 846.10, 846.101, 846.102, and 846.103 for sales of real property, no foreclosure, sale, or seizure of property for nonpayment of any sum due or for any other breach of terms is valid if it occurs during or within ~~3 months~~ 90 days after the service member's period of active state service active duty, unless the court ordered the foreclosure, sale, or seizure of property before the beginning of the service member's period of active state service active duty and approves the foreclosure, sale, or seizure after it occurs.

**SECTION 162.** 21.75 (13) of the statutes is renumbered 321.62 (13) and amended to read:

321.62 (13) PERSONAL PROPERTY CONTRACTS. When an action to resume possession of personal property, or to rescind or terminate a contract for the purchase of personal property, has been stayed under this section, the court may appoint 3 disinterested persons to appraise the

property. Based upon the report of the appraisers, and unless undue hardship would result to the dependents of the service member in active state service active duty, the court may order that a sum be paid to the service member as a condition of resuming possession of the property or rescinding or terminating the contract.

**SECTION 163.** 21.75 (14) of the statutes is renumbered 321.62 (14), and 321.62 (14) (a) 1. and (b), as renumbered, are amended to read:

321.62 (14) (a) 1. The lease was executed by or on behalf of a service member who entered active state service active duty after the lease was executed.

(b) A lease to which this subsection applies may be terminated by the service member at any time after the beginning of the service member's period of active state service active duty by giving notice in writing by personal delivery or first class mail to the landlord or the person who has been receiving rent or managing the property as the landlord's agent.

**SECTION 164.** 21.75 (15) of the statutes is renumbered 321.62 (15), and 321.62 (15) (a) and (b), as renumbered, are amended to read:

321.62 (15) (a) Notwithstanding ss. 704.05 (5) and 704.90, no person may enforce a lien for storage of any household goods, furniture, or personal effects of a service member during the period in which the service member is in ~~military service~~ state active duty and for 90 days after the member's completion of ~~military service~~ state active duty, except as permitted by a court order under par. (b).

(b) No person may exercise any right to foreclose or enforce a lien for the storage of household goods, furniture, or personal effects of a service member during the service member's period of active state service active duty and for ~~3 months~~ 90 days after that period ends except upon an order of the court. In an action under this paragraph, the court, after a hearing, may on its own motion, and shall, on application of the service member or some person acting on behalf of the service member, stay the proceeding or make such other order as may be equitable to conserve the interests of all parties, unless the court determines that the ability of the service member to pay storage charges due is not materially affected by his or her active state service active duty.

**SECTION 165.** 21.75 (16) of the statutes is renumbered 321.62 (16) and amended to read:

321.62 (16) DEPENDENT BENEFITS. Upon application to the court, a dependent of a service member is entitled to the same benefits given to a service member while in active state service active duty, unless the court determines that the ability of the dependent to comply with the terms of an obligation, contract, lease, or bailment is not materially impaired by reason of the service member's active state service active duty.

**SECTION 166.** 21.75 (17) of the statutes is renumbered 321.62 (17).

**SECTION 167.** 21.75 (18) of the statutes is renumbered 321.62 (18) and amended to read:

321.62 (18) CERTIFICATE OF SERVICE STATE ACTIVE DUTY; PERSON REPORTED MISSING. (a) In any action or proceeding under this section, a certificate signed by the adjutant general or a person designated by the adjutant general as to the period of state active service duty of a service member shall be ~~prima facie~~ evidence as to any of the following facts unless shown to be incorrect:

1. That the service member named has been in active state service active duty.

2. The period of the active state service active duty, including the date the service member was ordered into active state service active duty.

3. The monthly pay received by the service member in active state service active duty at the time the certificate was issued.

4. If the service member died while in active state service active duty, the date and the place where he or she died.

(b) The adjutant general shall provide the certificate under par. (a) upon request of the service member or of a person acting on behalf of the service member or his or her estate, and any certificate so provided shall be ~~prima facie~~ evidence of the facts stated in the certificate and of the authority of the signer to issue the certificate unless shown to be incorrect.

(c) When a service member in active state service active duty has been reported missing to the department, the service member shall be presumed to continue in active state service active duty until accounted for, and no period limited under this section which begins or ends with the death of a service member shall begin or end until the death of the service member is determined by the department or by a court.

**SECTION 168.** 21.75 (19) of the statutes is renumbered 321.62 (19).

**SECTION 169.** 21.75 (20) of the statutes is renumbered 321.62 (20), and 321.62 (20) (a), as renumbered, is amended to read:

321.62 (20) (a) A service member may, at any time during his or her period of active state service active duty, or within ~~6 months~~ 180 days after that service duty ends, apply to a court for relief with respect to any obligation or liability incurred by the service member before his or her period of active state service active duty. The court, after appropriate notice and hearing, may grant the following relief unless the court determines that the ability of the service member to comply with the terms of the obligation or liability has not been materially affected by his or her state active service duty:

1. In the case of an obligation payable in installments under a contract for the purchase of real estate, or secured by a mortgage upon real estate, a stay of the enforcement of the obligation during the period of active state service active duty and, from the date of the end of the period of

active state service active duty or from the date of requesting the relief if made after the service state active duty is ended, for a period equal to the period of the remaining life of the installment contract or instrument evidencing the obligation plus a period of time equal to the period of active state service active duty, or any part of that combined period. The court may issue a stay under this paragraph if the service member makes payments of the balance of the principal and accumulated interest due and unpaid at the date of the end of the period of active state service active duty or from the date of requesting the relief, whichever is appropriate, in equal installments during the combined period and at the rate of interest as is prescribed in the contract or instrument evidencing the obligation for installments paid when due. The court may order other terms under this paragraph as are just.

2. In the case of any other obligation or liability, a stay of the enforcement of that obligation or liability during the service member's period of active state service active duty and, from the date of the end of the period of active state service active duty or from the date of requesting the relief if made after the service duty is ended, for a period equal to the period of active state service active duty or any part of that period. The court may issue a stay under this paragraph if the service member makes payments of the balance of the principal and accumulated interest due and unpaid at the date of the end of the period of active state service active duty or from the date of requesting the relief, whichever is appropriate, in equal installments during the extended period and at the rate of interest as is prescribed for the obligation or liability when due. The court may order other terms under this paragraph as are just.

**SECTION 170.** 21.75 (21) of the statutes is renumbered 321.62 (21), and 321.62 (21) (b), as renumbered, is amended to read:

321.62 (21) (b) No power of attorney executed after December 14, 2001, by a service member in active state service active duty may be extended under par. (a) if the document creating the power of attorney clearly indicates that the power granted expires on the date specified even if the service member, after the date of execution of the document, is reported missing to the department.

**SECTION 171.** 21.75 (22) of the statutes is renumbered 321.62 (22), and 321.62 (22) (a), (b) 2. and (c) 1., as renumbered, are amended to read:

321.62 (22) (a) 1. If a service member who is called ordered into active state service active duty has coverage under a professional liability insurance policy that does not cover claims filed with respect to the service member during the period of active state service active duty unless the premiums are paid for the coverage for that period, the insurer that provides the coverage shall suspend the service member's coverage under the policy upon receipt of a written request from the service member to do so.

The insurer may not require that premiums be paid for the suspended coverage. The insurer shall refund any premium amount already paid for coverage of the service member for the period after the coverage is suspended or shall, at the option of the service member, apply such amount to payment of any premium that becomes due upon reinstatement of the coverage.

2. Subdivision 1. does not require the suspension of coverage for any other person who has coverage under the policy and who is not a service member called ordered into active state service active duty or relieve any person of the obligation to pay premiums for coverage that is not required to be suspended under subd. 1.

(b) 2. For purposes of subd. 1., a claim that is based on the failure of a professional to make adequate provision for the care of patients during the professional's period of active state service active duty shall be considered to be based on an action or the failure to take action before the beginning of the period during which coverage is suspended under this subsection, unless professional services were provided after the date on which the suspension of coverage began.

(c) 1. If a service member whose professional liability insurance coverage is suspended under par. (a) transmits to the insurer, within 30 days after the date on which the service member is released from active state service active duty, a written request for reinstatement of his or her professional liability insurance coverage, the insurer must reinstate the coverage as of the date on which the insurer receives the written request. The period for which the coverage must be reinstated may not be less than the balance of the period for which the coverage would have continued under the policy had the coverage not been suspended.

**SECTION 172.** 21.75 (23) of the statutes is renumbered 321.62 (23) and amended to read:

321.62 (23) NOTICE OF BENEFITS UNDER THIS SECTION. The department shall provide each service member a brochure explaining this section when that service member enters active state service active duty.

**SECTION 173.** 21.78 (title), (1), (2), (3) and (4) of the statutes are renumbered 321.63 (title), (1), (2), (3) and (4) and amended to read:

**321.63** (title) **Employees Local government employees or officers in military service federal active duty.** (1) The governing body of any county, town, city, village, school district, or technical college district A local governmental unit, as defined in s. 66.0135 (1) (c), may grant a leave of absence to any employee or officer who is inducted or who enlists in the U.S. armed forces for a period of military service federal active duty of not more than 4 5 years unless the employee is involuntarily retained for a longer period. No salary or compensation of the employee or officer shall be paid, nor claim for the salary or compensation exist, during the leave of absence, except as provided in this section. If the employee's or

officer's salary or compensation is less in the U.S. armed forces than was paid by the ~~county, town, city, village, school district, or technical college district~~ local governmental unit, that governmental unit may pay the employee or officer the difference between the salary or compensation paid by the U.S. armed forces and the salary or compensation that the employee or officer was paid by the ~~county, town, city, village, school district, or technical college district~~ local governmental unit at the time that he or she enlisted in or was inducted into the U.S. armed forces.

(2) The ~~governing body~~ local governmental unit may provide for safeguarding the reinstatement and pension rights, as limited in this section, of any employee or officer so inducted or enlisted.

(3) No employee or officer who is appointed to fill the place of any employee or officer so inducted or enlisted shall acquire permanent tenure during the period of the replacement service.

(4) If the leave of absence under sub. (1) is granted to an elected or appointed official or employee and the official or employee has begun ~~service in the U.S. armed forces~~ federal active duty, a temporary vacancy exists and a successor may be appointed to fill the unexpired term of the official or employee, or until the official or employee returns and files an election to resume the office if the date of the filing is prior to the expiration of the term. The appointment shall be made in the manner provided for the filling of vacancies caused by death, resignation, or otherwise, except that no election need be held to fill a temporary vacancy. The appointee has all the powers, duties, liabilities, and responsibilities and shall be paid and receive the compensation and other benefits of the office or position, unless otherwise provided by the ~~governing body~~ local governmental unit. Within 40 days after the termination of ~~service in the U.S. armed forces~~ federal active duty, the elected or appointed official or employee, upon filing with the clerk of the local governmental unit, a statement under oath of termination and that the official or employee elects to resume the office or position, may resume the office or position for the remainder of the term for which elected or appointed. The person temporarily filling the vacancy shall cease to hold the office on the date of the filing.

**SECTION 174.** 21.78 (5) of the statutes is repealed.

**SECTION 175.** 21.79 of the statutes is renumbered 321.64, and 321.64 (title), (1) (a) (intro.), 1., 3. and 5., (2) and (4), as renumbered, are amended to read:

**321.64 (title) Reemployment after completion of military service federal active duty or service.** (1) (a) (intro.) Any person who has enlisted or enlists in or who has been or is inducted or ordered into ~~active service in the U.S. armed forces pursuant to 50 App. USC 301, 401, and 451, or P.L. 87-117~~ federal active duty for 90 days or more, and any person whose services are requested by the federal government for national defense work as a civil-

ian during a period officially proclaimed to be a national emergency or a limited national emergency, who, to perform the ~~training duty~~ or service, has left or leaves a position, other than a temporary position, in the employ of any political subdivision of the state or in the employ of any private or other employer, shall be restored to that position or to a position of like seniority, status, pay, and salary advancement as though service toward seniority, status, pay, or salary advancement had not been interrupted by the absence, if all of the following conditions are met:

1. The person presents to the employer evidence of satisfactory completion of the period of ~~training or civilian~~ federal active duty or federal government service, or of discharge from the U.S. armed forces under conditions other than dishonorable.

3. The person makes application for reemployment and resumes work within 90 days after completion of the ~~training or~~ federal active duty or federal government service, military or civilian, or was so discharged from the U.S. armed forces, or within 6 months after release from hospitalization for duty-connected or service-connected injury or disease.

5. The ~~military service~~ federal active duty or federal government service was not for more than ~~4~~ 5 years unless extended by law.

(2) The service of any person who is or was restored to a position in accordance with sub. (1) shall be considered not to be interrupted by the absence, except for the receipt of pay or other compensation for the period of the absence and he or she shall be entitled to participate in insurance, pensions, retirement plans, or other benefits offered by the employer under established rules and practices relating to employees on furlough or leave of absence in effect with the employer at the time the person entered or was enlisted, inducted, or ordered into the ~~forces and service~~ federal active duty or federal government service. The person whose position was restored may not be discharged from the position without cause within one year after restoration and the discharge is subject to all federal or state laws affecting any private employment and to the provisions of contracts that may exist between employer and employee. Each ~~county, town, city, or village~~ political subdivision shall contribute or pay all contributions of the employer to the applicable and existent pension, annuity, or retirement system as though the service of the employee had not been interrupted by ~~military service~~ federal active duty or federal government service.

(4) No person who is appointed in the service of the state or of any ~~county, city, village, or town~~ political subdivision to fill the place of a person entering ~~service in the U.S. armed forces~~ federal active duty or federal government service under sub. (1) shall acquire permanent tenure during the period of that replacement service.



**SECTION 176.** 21.80 (title) and (1) (intro.) of the statutes are renumbered 321.65 (title) and (1) (intro.).

**SECTION 177.** 21.80 (1) (a) of the statutes is renumbered 321.65 (1) (a), and 321.65 (1) (a) (intro.), 1. and 3., as renumbered, are amended to read:

321.65 (1) (a) (intro.) “Active state service” means any of the following:

1. ~~Active service in the national guard or the state defense force under an order of the governor issued under this chapter~~ State active duty or active service duty in the national guard under 32 USC 502 (f) ~~that is not considered to be service in the uniformed services.~~

3. Active service duty in the national guard of any state under an order of the governor of that state.

**SECTION 178.** 21.80 (1) (b) to (e) of the statutes are renumbered 321.65 (1) (b) to (e).

**SECTION 179.** 21.80 (1) (f) of the statutes is repealed.

**SECTION 180.** 21.80 (1) (g) of the statutes is renumbered 321.65 (1) (f).

**SECTION 181.** 21.80 (2) of the statutes is renumbered 321.65 (2) and amended to read:

321.65 (2) MORE GENEROUS RIGHTS PERMITTED. Nothing in this section prohibits an employer from providing employees who are ~~called~~ ordered into active state service with reemployment rights and benefits that are more generous to the employee than the rights and benefits provided under this section.

**SECTION 182.** 21.80 (3) of the statutes is renumbered 321.65 (3), and 321.65 (3) (a) (intro.), 1., 2. and 4., (c), (d) 2., (e) 1., 2. and 3., (f) 1. and (h), as renumbered, are amended to read:

321.65 (3) (a) *Prerequisites.* (intro.) Subject to par. (d), any person who is a resident of this state and absent from a position of employment because of active state service is entitled to the reemployment rights and benefits specified in this section if all of the following apply:

1. Except as provided in par. (b), the person or an appropriate officer in the national guard of this or another state or the state defense force has given advanced notice of the active state service to the person's employer.

2. Except as provided in par. (c), the cumulative length of the absence from the position of employment and of all previous absences from a position of employment with the employer by reason of active state service or ~~service in the uniformed services~~ federal active duty does not exceed 5 years.

4. In the case of active state service in the national guard in this or another state or the state defense force, the active state service has not been terminated under other than honorable conditions.

(c) *Length of absence limit.* The periods of ~~service in the uniformed services~~ federal active duty described in 38 USC 4312 (c) (1) to (4) and all of the following periods of active state service are not included in calculating the 5-year period specified in par. (a) 2.:

1. Any period of active state service, ~~as defined in sub. (1) (a) 1.,~~ beyond that 5-year period that is required to complete an initial period of obligated active state service.

2. Any period of active state service, ~~as defined in sub. (1) (a) 1.,~~ for which the person, through no fault of the person's own, was unable to obtain orders releasing the person from a period of active state service before the expiration of the 5-year period.

3. Any period of active state service, ~~as defined in sub. (1) (a) 1.,~~ that was performed to fulfill any additional training requirements determined and certified in writing by the federal secretary of the army, the federal secretary of the air force, or the adjutant general to be necessary for professional development or for completion of skill training or retraining.

4. Any period of active state service that was performed by a person who was ordered to, or retained in, active state service, other than for training, because of a state emergency declared by the governor, because of a war or national emergency declared by the president of the United States or Congress, because of insurrection, rebellion, riot, invasion, or resistance to the execution of the laws of this state or of the United States, or in support of an operational mission, a critical mission, or any other requirement of the ~~uniformed services~~ U.S. armed forces.

(d) 2. The position of employment that the person left to perform active state service was for a brief, nonrecurrent period and there was no reasonable expectation that the position of employment would continue indefinitely or for a significant period of time.

(e) 1. Subject to subds. 4. and 5., if a person who has been absent from a position of employment because of active state service that lasted for less than 31 days, who has been absent from a position of employment for any period of time for the purpose of an examination to determine the person's fitness to perform active state service, or who has been absent from a position of employment because the person was hospitalized for or was convalescing from an illness or injury that was incurred in or aggravated during the performance of that active state service wishes to receive the reemployment rights and benefits specified in this section, the person must notify the person's employer of the person's intent to return to the position of employment by reporting to the employer by no later than the beginning of the first full regularly-scheduled work period on the first full calendar day following the completion of the active state service, examination, or period of hospitalization or convalescence, a period of time that allows for the safe transportation of the person from the place of active state service, examination, hospitalization, or convalescence to the person's residence, and a rest period of 8 hours following that transportation period or, if through no fault of the person's own reporting to the employer within that time

is impossible or unreasonable, by reporting to the employer as soon as possible after that 8-hour rest period.

2. Subject to subds. 4. and 5., if a person who has been absent from a position of employment because of active state service that lasted for more than 30 days, but less than 181 days, or who has been absent from a position of employment because the person was hospitalized for or was convalescing from an illness or injury that was incurred in or aggravated during the performance of that active state service wishes to receive the reemployment rights and benefits specified in this section, the person must notify the person's employer of the person's intent to return to the position of employment by submitting to the employer an application for reemployment by no later than 14 days after the completion of the active state service, hospitalization, or convalescence or, if through no fault of the person's own submitting the application within that time is impossible or unreasonable, by submitting to the employer an application for reemployment by no later than the first full calendar day on which submission of the application becomes possible.

3. Subject to subds. 4. and 5., if a person who has been absent from a position of employment because of active state service that lasted for more than 180 days or who has been absent from a position of employment because the person was hospitalized for or was convalescing from an illness or injury that was incurred in or aggravated during the performance of that active state service wishes to receive the reemployment rights and benefits specified in this section, the person must notify the person's employer of the person's intent to return to the position of employment by submitting to the employer an application for reemployment by no later than 90 days after the completion of the active state service, hospitalization, or convalescence or, if through no fault of the person's own submitting the application within that time is impossible or unreasonable, by submitting to the employer an application for reemployment by no later than the first full calendar day on which submission of the application becomes possible.

(f) 1. A person who submits an application for reemployment under par. (e) 2. or 3. must, on the request of the person's employer, provide to the employer documentation to establish that the application was submitted within the time limits specified in par. (e) 2. or 3., that the person's cumulative length of all absences from employment with the employer because of active state service ~~or service in the uniformed services and federal active duty~~ does not, except as permitted under par. (c), exceed 5 years, and, in the case of active state service in the national guard in this or another state or the state defense force, that the person's service was not terminated under other than honorable conditions.

(h) *Prohibited bases for denial of reemployment.* In determining a person's right to reemployment and other

benefits under this section, an employer may not deny reemployment or any other benefits based on the timing, frequency, duration, or nature of the person's active state service or ~~service in the uniformed services~~ federal active duty so long as the requirements under par. (a) are met.

**SECTION 183.** 21.80 (4) of the statutes is renumbered 321.65 (4), and 321.65 (4) (a), as renumbered, is amended to read:

321.65 (4) (a) *Prompt reemployment required.* 1. Subject to subds. 3. and 4. and par. (b), an employer shall reemploy a person who is entitled to reemployment under sub. (3) and whose period of active state service was for less than 91 days promptly on completion of that period of active state service in the position of employment in which the person would have been employed if the continuous employment of the person with the employer had not been interrupted by that active state service so long as the person is qualified to perform the duties of that position or, if after reasonable efforts by the employer to qualify the person to perform those duties the person is not qualified to perform those duties, in the position of employment in which the person was employed on the date on which the person's period of active state service began.

2. Subject to subds. 3. and 4. and par. (b), an employer shall reemploy a person who is entitled to reemployment under sub. (3) and whose period of active state service was for more than 90 days promptly on completion of that period of active state service in the position of employment in which the person would have been employed if the continuous employment of the person with the employer had not been interrupted by that active state service or in a position of employment of like seniority, status, and pay so long as the person is qualified to perform the duties of that position or, if after reasonable efforts by the employer to qualify the person to perform those duties the person is not qualified to perform those duties, in the position of employment in which the person was employed on the date on which the person's period of active state service began or in a position of employment of like seniority, status, and pay.

3. Subject to par. (b), in the case of a person who has a disability that was incurred in or aggravated during a period of active state service and who, after reasonable efforts by the employer to accommodate the disability, is not qualified due to the disability to perform the duties of the position of employment in which the person would have been employed if the continuous employment of the person with the employer had not been interrupted by the active state service, the employer shall reemploy the person promptly on completion of that period of active state service in any other position that is equivalent to that position in seniority, status, and pay, the duties of which the person is qualified to perform or would become qualified to perform with reasonable efforts by the employer, or, if there is no other position of employment available

that is equivalent to that position in seniority, status, and pay, in a position that is the nearest approximation to that equivalent position in terms of seniority, status, and pay, consistent with the person's circumstances.

4. Subject to par. (b), in the case of a person who is not qualified to be employed in the position of employment in which the person would have been employed if the continuous employment of the person with the employer had not been interrupted by the person's active state service or in the position of employment in which the person was employed on the date on which the person's period of active state service began for any reason other than disability incurred in or aggravated during a period of active state service and who cannot become qualified to be so employed with reasonable efforts by the employer, the employer shall reemploy the person promptly on completion of that period of active state service in any other position that the person is qualified to perform and that is the nearest approximation to the position of employment in which the person would have been employed if the continuous employment of the person with the employer had not been interrupted by that active state service, with full seniority, or if no position of employment that is the nearest approximation to that position is available, in a position of employment that the person is qualified to perform and that is the nearest approximation to the position of employment in which the person was employed on the date on which the person's period of active state service began, with full seniority.

**SECTION 184.** 21.80 (5) of the statutes is renumbered 321.65 (5) and amended to read:

321.65 (5) **RIGHTS, BENEFITS, AND OBLIGATIONS.** (a) *Seniority.* A person who is reemployed under this section is entitled to the seniority and other rights and benefits determined by seniority that the person had on the last day of employment before the person's active state service began, plus all seniority and other rights and benefits determined by seniority that the person would have had if the continuous employment of the person with the employer had not been interrupted by that active state service.

(b) *Continuation of benefits.* 1. Subject to subds. 2. to 5., a person who is absent from employment because of active state service is considered to be on furlough or leave of absence while performing the active state service and is entitled to receive all rights and benefits not determined by seniority that are generally provided by the employer to employees having similar seniority, status, and pay who are on furlough or leave of absence under a contract, agreement, policy, practice, or plan that is in effect on the day on which the active state service began or that is established while the person is performing the active state service.

2. If an employer shows that a person who is absent from a position of employment because of active state

service has knowingly provided written notice of the person's intent not to return to a position of employment with the employer after that active state service and, in doing so, was aware of the specific rights and benefits under subd. 1. that the person would lose while absent from the position of employment, the person is not entitled to the rights and benefits specified in subd. 1. while absent from employment.

3. A person who is considered to be on furlough or leave of absence under subd. 1. while performing active state service is not entitled to any benefit to which the person would not otherwise be entitled if the person had remained continuously employed.

4. An employer may require a person who is considered to be on furlough or leave of absence under subd. 1. while performing active state service to pay the employee cost, if any, of any benefit that is continued under subd. 1. to the same extent that other employees who are on furlough or leave of absence are so required.

5. A person who is absent from a position of employment because of active state service is entitled to receive coverage under a health benefit plan during the absence and on reemployment as provided in sub. (6).

(c) *Protection from discharge.* An employer that reemploys under this section a person whose period of active state service lasted for more than 30 days, but less than 181 days, may not discharge the person within 180 days after the date of reemployment except for cause. An employer that reemploys under this section a person whose period of active state service lasted for more than 180 days may not discharge the person within one year after the date of reemployment except for cause.

**SECTION 185.** 21.80 (6) of the statutes is renumbered 321.65 (6), and 321.65 (6) (a) (intro.) and (c), as renumbered, are amended to read:

321.65 (6) (a) *Option to continue coverage.* (intro.) Notwithstanding s. 632.897, if a person who has coverage under a health benefit plan in connection with the person's employment is absent from a position of employment because of active state service, the insurer that issued the health benefit plan shall permit the person, and the person's dependents, to continue coverage under the health benefit plan until the first to occur of the following:

(c) *Reinstatement on reemployment.* If a person's coverage under a health benefit plan in connection with his or her employment was terminated because of the person's active state service and if after returning from that active state service the person is reemployed under sub. (3), coverage under the health benefit plan shall be reinstated for the person and the person's dependents immediately upon reemployment. With respect to the reinstated coverage, no exclusion or waiting period may be imposed that would not have been imposed had the coverage not been terminated because of the active state service.

**SECTION 186.** 21.80 (7) of the statutes is renumbered 321.65 (7).

**SECTION 187.** 21.80 (8) of the statutes is repealed.

**SECTION 188.** 40.05 (4g) (a) 4. of the statutes is amended to read:

40.05 (4g) (a) 4. Has received a military leave of absence under s. 230.32 (3) (a) or 230.35 (3), under a collective bargaining agreement under subch. V of ch. 111 or under rules promulgated by the director of the office of state employment relations or is eligible for reemployment with the state under s. ~~21.79~~ 321.64 after completion of his or her service in the U.S. armed forces.

**SECTION 189.** 45.03 (13) (e) of the statutes is amended to read:

45.03 (13) (e) Provide county veterans service officers with the information provided to the department by the adjutant general under s. ~~21.19~~ (14) 321.04 (1) (o) and may provide county veterans service officers with information on all necessary military points of contact and general deployment information for reserve units of the U.S. armed forces.

**SECTION 190.** 45.20 (2) (d) 3. of the statutes is amended to read:

45.20 (2) (d) 3. A veteran may not receive reimbursement under this subsection for any semester in which he or she is eligible for or received a grant under s. ~~21.49~~ 321.40 or under 10 USC 2007.

**SECTION 191.** 45.60 (1) (b) of the statutes is amended to read:

45.60 (1) (b) Military funeral honors may be provided by local units of member organizations of the council on veterans programs, by local units of veterans organizations certified by the department to provide military funeral honors, by members of the Wisconsin national guard activated under s. ~~21.11~~ (3) 321.04 (2) (e), or by staff of the department.

**SECTION 192.** 71.93 (1) (a) 6. of the statutes is amended to read:

71.93 (1) (a) 6. An amount owed to the department of military affairs under s. ~~21.49~~ (3m) 321.40 (5).

**SECTION 193.** 106.54 (7) of the statutes is amended to read:

106.54 (7) The division shall receive complaints under s. ~~21.80~~ (7) (b) 1. or 2. 321.65 (7) (b) 1. or 2. and shall process the complaints in the same manner that employment discrimination complaints are processed under s. 111.39.

**SECTION 194.** 121.05 (1) (a) 13. of the statutes is amended to read:

121.05 (1) (a) 13. Pupils attending the Youth Challenge Academy program under s. ~~21.26~~ 321.03 (1) (c).

**SECTION 195.** 121.095 (title) of the statutes is amended to read:

**121.095 (title) State aid adjustment; Youth Challenge Academy program.**

**SECTION 196.** 121.095 (1) (a) of the statutes is amended to read:

121.095 (1) (a) Determine the number of pupils counted in the school district's membership who are attending the Youth Challenge Academy program under s. ~~21.26~~ 321.03 (1) (c).

**SECTION 197.** 121.095 (1) (b) 1. of the statutes is amended to read:

121.095 (1) (b) 1. The amount determined by the department of military affairs under s. ~~21.26~~ (2) (a) 321.03 (1) (c) 1.

**SECTION 198.** 121.90 (1) (intro.) of the statutes is amended to read:

121.90 (1) (intro.) "Number of pupils enrolled" means the number of pupils enrolled on the 3rd Friday of September, including pupils identified in s. 121.05 (1) (a) 1. to 11. and 13., and the number of pupils attending the Youth Challenge Academy program under s. ~~21.26~~ 321.03 (1) (c) in the previous spring session, except that "number of pupils enrolled" excludes the number of pupils attending public school under s. 118.145 (4) and except as follows:

**SECTION 199.** 230.04 (17) of the statutes is amended to read:

230.04 (17) The director shall resolve any dispute raised by a complaint filed under s. ~~21.79~~ (1) (e) 321.64 (1) (c).

**SECTION 200.** 230.315 (1) (c) of the statutes is amended to read:

230.315 (1) (c) The employee has received a military leave of absence under s. 230.32 (3) (a) or 230.35 (3), under a collective bargaining agreement under subch. V of ch. 111, or under rules promulgated by the office of employment relations or is eligible for reemployment with the state under s. ~~21.79~~ 321.64 after completion of his or her service in the U.S. armed forces.

**SECTION 201.** 230.32 (7) of the statutes is amended to read:

230.32 (7) Any employee who is absent from state service because the employee is in active service, as defined in s. ~~21.80~~ (1) (a) 321.65 (1) (a), is entitled to all reemployment rights and benefits provided under s. ~~21.80~~ 321.65.

**SECTION 202.** 302.31 (1m) of the statutes is created to read:

302.31 (1m) The detention of persons subject to confinement under s. 322.011.

**SECTION 203.** Chapter 321 (title) of the statutes is created to read:

## CHAPTER 321

### DEPARTMENT OF MILITARY AFFAIRS

**SECTION 204.** Subchapter I (title) of chapter 321 [precedes 321.01] of the statutes is created to read:



**CHAPTER 321****SUBCHAPTER I****GENERAL PROVISIONS**

**SECTION 205.** 321.01 of the statutes is created to read:

**321.01 Definitions.** In this chapter:

(1) "Active duty" means federal active duty or state active duty.

(2) "Department" means the department of military affairs.

(3) "Facility" includes armory, base, installation, and airfield.

(4) "Federal active duty" means full-time duty in the active military service of the United States, as defined in 10 USC 101 (d) or 32 USC 502, 503, or 904.

(5) "Law enforcement agency" means an agency of the federal government, a federally recognized Indian tribe or band, or a state or political subdivision of a state, whose purpose is the detection and prevention of crime and enforcement of laws or ordinances.

(6) "Law enforcement officer" means any person employed by a law enforcement agency who is authorized to make arrests for violations of the laws or ordinances that the person is employed to enforce.

(7) "Military property" includes arms, clothing, equipment, publications, supplies, and vehicles owned by or in the custody of the department.

(8) "Military records" means correspondence, medical records, personnel records, and other documents in the custody of the department.

(9) "National guard," unless the context otherwise requires, means both the Wisconsin army national guard and the Wisconsin air national guard.

(10) "Political subdivision" means a city, village, town, or county.

(11) "State active duty" means full-time state duty in the national guard, or state defense force when activated, under an order of the governor or under an order otherwise issued by authority of law, and includes travel to and from that duty.

(12) "Unit" means a formally organized division or subset of the national guard or state defense force.

(13) "Wisconsin code of military justice" means the Wisconsin Code of Military Justice under ch. 322.

**SECTION 206.** 321.02 (title) of the statutes is created to read:

**321.02 (title) Powers and duties of the governor.**

**SECTION 207.** 321.04 (title) and (1) (intro.) of the statutes are created to read:

**321.04 (title) Powers and duties of the adjutant general.** (1) (intro.) The adjutant general or his or her designee shall do all of the following:

**SECTION 208.** 321.04 (1) (b) of the statutes is created to read:

321.04 (1) (b) Advise the governor on military issues and transmit military correspondence to and from the governor.

**SECTION 209.** 321.04 (1) (j) of the statutes is created to read:

321.04 (1) (j) Prepare the training of national guard members.

**SECTION 210.** 321.04 (1) (m) of the statutes is created to read:

321.04 (1) (m) Prepare and issue all necessary accounting books and forms for the national guard. All of the accounting books and forms shall conform as nearly as practicable to those in use in the U.S. army or air force.

**SECTION 211.** 321.04 (1) (p) of the statutes is created to read:

321.04 (1) (p) Perform the duties under s. 321.51 (2) (e).

**SECTION 212.** 321.04 (2) (intro.) of the statutes is created to read:

321.04 (2) (intro.) The adjutant general or his or her designee may do any of the following:

**SECTION 213.** 321.04 (2) (f) of the statutes is created to read:

321.04 (2) (f) Perform the duties under 321.51 (2) (b).

**SECTION 214.** Subchapter II (title) of chapter 321 [precedes 321.10] of the statutes is created to read:

**CHAPTER 321****SUBCHAPTER II****MILITARY OFFICERS**

**SECTION 215.** 321.10 (1) (e) of the statutes is created to read:

321.10 (1) (e) A joint chief of staff, whose rank may not exceed major general.

**SECTION 216.** Subchapter III (title) of chapter 321 [precedes 321.20] of the statutes is created to read:

**CHAPTER 321****SUBCHAPTER III****MILITARY PROPERTY**

**SECTION 217.** 321.21 (1) of the statutes is created to read:

321.21 (1) In this section, "money" means funds in the custody of the department.

**SECTION 218.** 321.23 (title) of the statutes is created to read:

**321.23 (title) Facilities and lands.**

**SECTION 219.** Subchapter IV (title) of chapter 321 [precedes 321.30] of the statutes is created to read:

**CHAPTER 321****SUBCHAPTER IV****NATIONAL GUARD AND  
STATE DEFENSE FORCE**

**SECTION 220.** 321.39 (1) (a) (intro.) of the statutes is created to read:

321.39 (1) (a) (intro.) The governor may order into state active duty members of the national guard under the following circumstances:

**SECTION 221.** 321.39 (1) (a) 3. of the statutes is created to read:

321.39 (1) (a) 3. If the governor declares a state of emergency relating to public health under s. 166.03 (1) (b).

**SECTION 222.** 321.40 (2) (f) of the statutes is created to read:

321.40 (2) (f) Failing to be an actively drilling guard member upon the date of the satisfactory completion of a full-time or part-time course in a qualifying school.

**SECTION 223.** 321.40 (6) (d) of the statutes is created to read:

321.40 (6) (d) No guard member may receive a tuition grant under this section unless he or she is a member in good standing in the national guard at the time of completion of the course.

**SECTION 224.** 321.51 (2) (b) of the statutes is created to read:

321.51 (2) (b) If the state defense force is organized under sub. (1), the adjutant general may perform the duties under s. 321.04 (2) (a), (b), (c) and (d) for the state defense force.

**SECTION 225.** 321.51 (2) (e) of the statutes is created to read:

321.51 (2) (e) If the state defense force is organized under sub. (1), the adjutant general shall perform the duties under s. 321.04 (1) (a) to (n) and (q) for the state defense force.

**SECTION 226.** Subchapter V (title) of chapter 321 [precedes 321.60] of the statutes is created to read:

#### **CHAPTER 321**

##### **SUBCHAPTER V**

##### **RIGHTS OF SERVICE MEMBERS**

**SECTION 227.** Chapter 322 of the statutes is created to read:

#### **CHAPTER 322**

#### **WISCONSIN CODE OF MILITARY**

##### **JUSTICE**

##### **SUBCHAPTER I**

##### **GENERAL PROVISIONS**

**322.0001 Criminal code interaction.** (1) Chapters 939, 967 to 973, and 975 to 979 do not apply to proceedings under this chapter.

(2) A crime under this code is a crime under s. 939.12. A felony under this code is a felony under s. 939.22 (12). A misdemeanor under this code is a misdemeanor under s. 939.22 (20).

**322.001 Article 1—Definitions.** In this chapter, unless the context otherwise requires:

(1) “Accuser” means a person who signs and swears to charges, any person who directs that charges nominally be signed and sworn to by another, and any other person who has an interest other than an official interest in the prosecution of the accused.

(2) “Cadet,” “candidate,” or “midshipman” means a person who is enrolled in or attending a state military

academy, a regional training institute, or any other formal education program for the purpose of becoming a commissioned officer in a state military force.

(3) “Classified information” means any of the following:

(a) Any information or material that has been determined by an official of the United States or any state subject to law, an executive order, or regulation to require protection against unauthorized disclosure for reasons of state security or national defense or foreign relations of the United States.

(b) Any restricted data, as defined in 42 USC 2014 (y).

(4) “Code” means this chapter.

(5) “Commanding officer” includes only commissioned officers of the state military forces and shall include officers in charge only when administering non-judicial punishment under s. 322.015. The term ‘commander’ has the same meaning as ‘commanding officer’ unless the context otherwise requires.

(6) “Convening authority” includes, in addition to the person who convened the court, a commissioned officer commanding for the time being or a successor in command to the convening authority.

(7) “Day” means calendar day and is not synonymous with the term “unit training assembly.” Any punishment authorized by this code which is measured in terms of days shall, when served in a status other than annual field training, be construed to mean succeeding duty days.

(8) “Duty status other than state active duty” means any other type of duty including Unit Training Assemblies or drills but excludes duty not in federal service and not full-time duty in the active service of the state; under an order issued by authority of law and includes travel to and from duty.

(9) “Enemy” includes organized forces of the enemy in time of war, any hostile body that U.S. or state forces may be opposing, such as a rebellious mob or band of renegades, and includes civilians as well as members of military organizations. Enemy is not restricted to the enemy government or its armed forces.

(10) “Enlisted member” means a person in an enlisted grade.

(11) “Forfeiture” means a permanent loss of entitlement to pay or allowances and any forfeiture under this code is not a forfeiture for purposes of Article X, Section 2, of the Wisconsin constitution.

(12) “Judge advocate” means a commissioned officer of the organized state military forces who is an attorney licensed to practice in this state or a member in good standing of the bar of the highest court of another state, and is any of the following:

(a) Certified or designated as a judge advocate in the Judge Advocate General’s Corps of the army, air force, navy, or the marine corps or designated as a law specialist

as an officer of the coast guard, or a reserve component of one of these.

(b) Certified as a non-federally recognized judge advocate, under regulations promulgated subject to this provision, by the senior judge advocate of the commander of the force in the state military force of which the accused is a member, as competent to perform military justice duties required by this code. If there is no judge advocate available, then certification may be made by the senior judge advocate of the commander of another force in the state military forces, as the convening authority directs.

(13) "Military court" means a court of inquiry under s. 322.135 or a court-martial.

(14) "Military judge" means an official of a general or special court-martial detailed under s. 322.026.

(15) "Military offenses" means those offenses prescribed under articles 77, principals; 78, accessory after the fact; 80, attempts; 81, conspiracy; 82, solicitation; 83, fraudulent enlistment, appointment, or separation; 84, unlawful enlistment, appointment, or separation; 85, desertion; 86, absence without leave; 87, missing movement; 88, contempt toward officials; 89, disrespect towards superior commissioned officer; 90, assaulting or willfully disobeying superior commissioned officer; 91, insubordinate conduct toward warrant officer, noncommissioned officer, or petty officer; 92, failure to obey order or regulation; 93, cruelty and maltreatment; 94, mutiny or sedition; 95, resistance, flight, breach of arrest, and escape; 96, releasing prisoner without proper authority; 97, unlawful detention; 98, noncompliance with procedural rules; 99, misbehavior before the enemy; 100, subordinate compelling surrender; 101, improper use of countersign; 102, forcing a safeguard; 103, captured or abandoned property; 104, aiding the enemy; 105, misconduct as prisoner; 107, false official statements; 108, military property — loss, damage, destruction, or wrongful disposition; 109, property other than military property — waste, spoilage, or destruction; 110, improper hazarding of vessel; 111, drunken or reckless operation of a vehicle, aircraft, or vessel; 112, drunk on duty; 112a, wrongful use, or possession of controlled substances; 113, misbehavior of sentinel; 114, dueling; 115, malin-gering; 116, riot or breach of peace; 117, provoking speeches or gestures; 120, rape or carnal knowledge; 121, larceny and wrongful appropriation; 122, robbery; 123, forgery; 124, maiming; 126, arson; 127, extortion; 128, assault; 129, burglary; 130, housebreaking; 131, perjury; 132, frauds against the government; 133, conduct unbecoming an officer and a gentleman; and 134, general; of this code.

(16) "Nonmilitary offenses" mean offenses which are in the state's civilian penal statute and are not offenses in this code.

(17) "Officer" means a commissioned or warrant officer.

(18) "Officer in charge" means a member of the naval militia, the navy, the marine corps, or the coast guard as designated by appropriate authority.

(19) "Record," when used in connection with the proceedings of a court-martial, means any of the following:

(a) An official written transcript, written summary, or other writing relating to the proceedings.

(b) An official audiotape, videotape, digital image or file, or similar material from which sound, or sound and visual images, depicting the proceedings may be reproduced.

(20) "Senior force commander" means the commander of the same force of the state military forces as the accused.

(21) "Senior force judge advocate" means the senior judge advocate of the commander of the same force of the state military forces as the accused and who is that commander's chief legal advisor.

(22) "State active duty" means full-time duty in the state military forces under an order of the governor or otherwise issued by authority of law, and paid by state funds, and includes travel to and from duty.

(23) "State military forces" means the Wisconsin army and air national guard, the national guard, as defined in 32 USC 502, 503, or 904, the state defense force, the organized naval militia of the state, and any other military force organized under the Constitution and laws of the state, and does not include the unorganized militia, state guard, or home guard, when not in a status subjecting them to exclusive jurisdiction under 10 USC ch. 47.

(24) "Superior commissioned officer" means a commissioned officer superior in rank or command.

(25) "Unit Training Assembly" means an assembly for drill and instruction which may consist of a single ordered formation of a company, battery, squadron, or detachment, or, when authorized by the commander, a series of ordered formations of those organizations.

**322.002 Article 2—Persons subject to this code; jurisdiction.** (1) Except as provided in s. 322.003, this code applies only to members of the state military forces at all times.

(2) Subject matter jurisdiction is established if a nexus exists between an offense under this code and the state military force. Courts-martial have primary jurisdiction of military offenses as defined in s. 322.001. A proper civilian court has primary jurisdiction of a non-military offense when an act or omission violates both this code and local criminal law, foreign or domestic. In this case, a court-martial may be initiated only after the civilian authority has declined to prosecute or dismissed the charge, provided jeopardy has not attached. Jurisdiction over attempted crimes, conspiracy crimes, solicitation, and accessory crimes must be determined by the underlying offense.

**322.003 Article 3—Jurisdiction to try certain personnel.** (1) Each person discharged from a state military force who is later charged with having fraudulently obtained a discharge is, subject to s. 322.043, subject to trial by court-martial on that charge and is, after apprehension, subject to this code while in custody under the direction of the state military forces for that trial. Upon conviction of that charge that person is subject to trial by court-martial for all offenses under this code committed before the fraudulent discharge.

(2) No person who has deserted from a state military force may be relieved from amenability to the jurisdiction of this code by virtue of a separation from any later period of service.

**322.005 Article 5—Territorial applicability of the code.** (1) This code has applicability in all places, provided that either the person subject to the code is in a duty status or, if not in a duty status, that there is a nexus between the act or omission constituting the offense and the efficient functioning of the state military forces; however, this grant of military jurisdiction shall neither preclude nor limit civilian jurisdiction over an offense.

(2) Military courts may be convened and held in units of a state military force while those units are serving outside the state with the same jurisdiction and powers as to persons subject to this code as if the proceedings were held inside the state, and offenses committed outside the state may be tried and punished either inside or outside the state.

**322.006 Article 6—Judge advocates.** (1) The senior force judge advocates in each of the state's military forces or that judge advocate's delegates shall make frequent inspections in the field in supervision of the administration of military justice in that force.

(2) Convening authorities shall at all times communicate directly with their judge advocates in matters relating to the administration of military justice. The judge advocate of any command is entitled to communicate directly with the judge advocate of a superior or subordinate command, or with the state judge advocate.

(3) No person who has acted as member, military judge, trial counsel, defense counsel, or investigating officer, or who has been a witness, in any case may later act as a judge advocate to any reviewing authority upon the same case.

## SUBCHAPTER II

### APPREHENSION AND RESTRAINT

**322.007 Article 7—Apprehension.** (1) In this section, "apprehension" means the taking of a person into custody.

(2) Any person authorized by this code or by the Uniform Code of Military Justice, or by regulations issued under either, to apprehend persons subject to this code, any marshal of a court-martial appointed subject to the provisions of this code, and any peace officer or civil officer having authority to apprehend offenders under the

laws of the United States or of a state, may do so upon probable cause that an offense has been committed and that the person apprehended committed it.

(3) Commissioned officers, warrant officers, petty officers, and noncommissioned officers have authority to quell quarrels, frays, and disorders among persons subject to this code and to apprehend persons subject to this code.

(4) If an offender is apprehended outside the state, the offender's return to the state must be in accordance with normal extradition procedures or by reciprocal agreement.

(5) No person authorized by this section to apprehend persons subject to this code or the place where an offender is confined, restrained, held, or otherwise housed may require payment of any fee or charge for so receiving, apprehending, confining, restraining, holding, or otherwise housing a person except as otherwise provided by law.

**322.009 Article 9—Imposition of restraint.** (1) In this section:

(a) "Arrest" means the restraint of a person by an order, not imposed as a punishment for an offense, directing him or her to remain within certain specified limits.

(b) "Confinement" means the physical restraint of a person.

(2) An enlisted member may be ordered into arrest or confinement by any commissioned officer by an order, oral or written, delivered in person or through other persons subject to this code. A commanding officer may authorize warrant officers, petty officers, or noncommissioned officers to order enlisted members of the commanding officer's command or subject to the commanding officer's authority into arrest or confinement.

(3) A commissioned officer, a warrant officer, or a civilian subject to this code or to trial there under may be ordered into arrest or confinement only by a commanding officer to whose authority the person is subject, by an order, oral or written, delivered in person or by another commissioned officer. The authority to order persons into arrest or confinement may not be delegated.

(4) No person may be ordered into arrest or confinement except for probable cause.

(5) This section does not limit the authority of persons authorized to apprehend offenders to secure the custody of an alleged offender until proper authority may be notified.

**322.010 Article 10—Restraint of persons charged with offenses.** Any person subject to this code charged with an offense under this code may be ordered into arrest or confinement, as circumstances may require. When any person subject to this code is placed in arrest or confinement prior to trial, immediate steps shall be taken to inform the person of the specific wrong of which the person is accused and diligent steps shall be taken to try the person or to dismiss the charges and release the person.



**322.011 Article 11—Place of confinement; reports and receiving of prisoners.** (1) If a person subject to this code is confined before, during, or after trial, he or she shall be in a civilian or military confinement.

(2) No sheriff or other person authorized to receive prisoners subject to sub. (1) may refuse to receive or keep any prisoner committed to the person's charge by a commissioned officer of the state military forces, when the committing officer furnishes a statement, signed by the officer, of the offense charged against the prisoner, unless otherwise authorized by law.

(3) Every person authorized to receive prisoners subject to sub. (1) to whose charge a prisoner is committed shall, within 24 hours after that commitment or as soon as the person is released from guard, report to the commanding officer of the prisoner the name of the prisoner, the offense charged against the prisoner, and the name of the person who ordered or authorized the commitment.

**322.012 Article 12—Confinement with enemy prisoners prohibited.** No member of a state military force may be placed in confinement in immediate physical association with enemy prisoners or other foreign nationals not members of the armed forces.

**322.013 Article 13—Punishment prohibited before trial.** No person, while being held for trial or awaiting a verdict, may be subjected to punishment or penalty other than arrest or confinement upon the charges pending against the person, nor shall the arrest or confinement imposed upon the person be any more rigorous than the circumstances required to insure the person's presence, but the person may be subjected to minor punishment during that period for infractions of discipline.

**322.014 Article 14—Delivery of offenders to civil authorities.** (1) A person subject to this code accused of an offense under this code or under the state's civilian penal statute may be delivered to the civil authority for trial or confinement.

(2) When delivery under this section is made to any civil authority of a person undergoing sentence of a court-martial, the delivery, if followed by conviction in a civil tribunal, interrupts the execution of the sentence of the court-martial, and the offender after having answered to the civil authorities for the offense shall, upon the request of competent military authority, be returned to the place of original custody for the completion of the person's sentence.

#### SUBCHAPTER III

#### NONJUDICIAL PUNISHMENT

**322.015 Article 15—Commanding officer's non-judicial punishment.** (1) Under regulations as prescribed, any commanding officer, and for purposes of this section, officers-in-charge, may impose disciplinary punishments for minor offenses without the intervention of a court-martial. The governor, the adjutant general, or an officer of a general or flag rank in command may dele-

gate the powers under this section to a principal assistant who is a member of a state military force.

(2) Any commanding officer may impose any of the following upon enlisted members of the officer's command:

(a) Admonition.

(b) Reprimand.

(c) Withholding of privileges for not more than 6 months, which need not be consecutive.

(d) Forfeiture of not more than 7 days' pay.

(e) Fine of not more than 7 days' pay.

(f) Reduction to the next inferior pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction.

(g) Extra duties, including fatigue or other duties, for not more than 14 days, which need not be consecutive.

(h) Restriction to certain specified limits, with or without suspension from duty, for not more than 14 days, which need not be consecutive.

(3) Any commanding officer of the grade of major or lieutenant commander, or above may impose any of the following upon enlisted members of the officer's command:

(a) Any punishment authorized in sub. (2) (a), (b), and (c).

(b) Forfeiture of not more than one-half of one month's pay per month for 2 months.

(c) Fine of not more than one month's pay.

(d) Reduction to the lowest or any intermediate pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction, but an enlisted member in a pay grade above E-4 may not be reduced more than 2 pay grades.

(e) Extra duties, including fatigue or other duties, for not more than 45 days, which need not be consecutive.

(f) Restriction to certain specified limits, with or without suspension from duty, for not more than 60 days, which need not be consecutive.

(4) The governor, the adjutant general, an officer exercising general court-martial convening authority, or an officer of a general or flag rank in command may impose any of the following penalties:

(a) Upon officers of the officer's command, any punishment authorized in sub. (3) (a), (b), (c), and (f) and arrest in quarters for not more than 30 days, which need not be consecutive.

(b) Upon enlisted members of the officer's command, any punishment authorized in sub. (3).

(5) Whenever any of the punishments under this section are combined to run consecutively, the total length of the combined punishment cannot exceed the authorized duration of the longest punishment in the combination, and there must be an apportionment of punishments

so that no single punishment in the combination exceeds its authorized length under this section.

(6) The service member shall have the right to demand trial by court-martial in lieu of nonjudicial punishment, and shall have the right to consult with a judge advocate.

(7) The officer who imposes the punishment, or the successor in command, may, at any time, suspend, set aside, mitigate, or remit any part or amount of the punishment and restore all rights, privileges, and property affected. The officer also may do any of the following:

- (a) Mitigate reduction in grade to forfeiture of pay.
- (b) Mitigate arrest in quarters to restriction.
- (c) Mitigate extra duties to restriction.

(8) The mitigated punishment shall not be for a greater period than the punishment mitigated. When mitigating reduction in grade to forfeiture of pay, the amount of the forfeiture shall not be greater than the amount that could have been imposed initially under this section by the officer who imposed the punishment mitigated.

(9) A person punished under this section who considers the punishment unjust or disproportionate to the offense may, through the proper channel, appeal to the next superior authority within 15 days after the punishment is either announced or sent to the accused, as the commander may determine. The appeal shall be promptly forwarded and decided, but the person punished may in the meantime be required to undergo the punishment adjudged. The superior authority may exercise the same powers with respect to the punishment imposed as may be exercised under sub. (7) by the officer who imposed the punishment. Before acting on an appeal from a punishment, the authority that is to act on the appeal may refer the case to a judge advocate for consideration and advice.

(10) The imposition and enforcement of disciplinary punishment under this section for any act or omission is not a bar to trial by court-martial or a civilian court of competent jurisdiction for a serious crime or offense growing out of the same act or omission and not properly punishable under this section; but the fact that a disciplinary punishment has been enforced may be shown by the accused upon trial and, when so shown, it shall be considered in determining the measure of punishment to be adjudged in the event of a finding of guilty.

(11) Whenever a punishment of forfeiture of pay is imposed under this section, the forfeiture may apply to pay accruing before, on, or after the date that punishment is imposed.

(12) Regulations may prescribe the form of records to be kept of proceedings under this section and may prescribe that certain categories of those proceedings shall be in writing.

#### SUBCHAPTER IV

#### COURT-MARTIAL JURISDICTION

##### **322.016 Article 16—Courts-martial classified.**

The 3 kinds of courts-martial in the state military forces are as follows:

(1) General courts-martial, consisting of any of the following:

(a) A military judge and not less than 5 members.

(b) Only a military judge, if before the court is assembled the accused, knowing the identity of the military judge and after consultation with defense counsel, requests orally on the record or in writing a court composed only of a military judge and the military judge approves.

(2) Special courts-martial, consisting of any of the following:

(a) A military judge and not less than 3 members. An accused may waive having 12 members and proceed to a special court-martial with not less than 6 members.

(b) Only a military judge, if one has been detailed to the court, and the accused under the same conditions as those prescribed in sub. (1) (b) so requests.

(3) Summary courts-martial, consisting of one commissioned officer.

**322.017 Article 17—Jurisdiction of courts-martial in general.** Each component of the state military forces has court-martial jurisdiction over all members of the particular component who are subject to this code. Additionally, the state military forces have court-martial jurisdiction over all members subject to this code.

**322.018 Article 18—Jurisdiction of general courts-martial.** Subject to s. 322.017, general courts-martial have jurisdiction to try persons subject to this code for any offense made punishable by this code, and may, under limitations as the governor may prescribe, adjudge any punishment not forbidden by this code.

**322.019 Article 19—Jurisdiction of special courts-martial.** Subject to s. 322.017, special courts-martial have jurisdiction to try persons subject to this code for any offense made punishable by this code, and may, under limitations as the governor may prescribe, adjudge any punishment not forbidden by this code except dishonorable discharge, dismissal, confinement for more than one year, forfeiture of pay exceeding two-thirds pay per month, or forfeiture of pay for more than one year.

**322.020 Article 20—Jurisdiction of summary courts-martial.** (1) Subject to s. 322.017, summary courts-martial have jurisdiction to try persons subject to this code, except officers, cadets, candidates, and midshipmen, for any offense made punishable by this code under limitations as the governor may prescribe.

(2) No person with respect to whom summary courts-martial have jurisdiction may be brought to trial before a summary court-martial if that person objects. If objection to trial by summary court-martial is made by an accused, trial by special or general court-martial may be ordered, as may be appropriate. Summary courts-martial may, under limitations as the governor may prescribe, adjudge any punishment not forbidden by this code except dismissal, dishonorable or bad-conduct discharge, confinement for more than one month, restriction to specified limits for more than 2 months, or forfeiture of more than two-thirds of one month's pay.

#### SUBCHAPTER V APPOINTMENT AND COMPOSITION OF COURTS-MARTIAL

**322.022 Article 22—Who may convene general courts-martial.** (1) General courts-martial may be convened by any of the following:

- (a) The governor.
- (b) The adjutant general.
- (c) The commanding general officer of any force of the state military forces.
- (d) The commanding officer of a division or a separate brigade.

- (e) The commanding officer of a separate wing.

(2) If any commanding officer is an accuser, the court shall be convened by superior competent authority and may in any case be convened by a superior authority if considered desirable by the authority.

**322.023 Article 23—Who may convene special courts-martial.** (1) Special courts-martial may be convened by any of the following:

- (a) Any person who may convene a general court-martial.
- (b) The commanding officer of a garrison, fort, post, camp, station, air national guard base, or naval base or station.

- (c) The commanding officer of a brigade, regiment, detached battalion, or corresponding unit of the army national guard.

- (d) The commanding officer of a wing, group, separate squadron, or corresponding unit of the air national guard.

- (e) The commanding officer or officer in charge of any other command when empowered by the adjutant general.

(2) If the officer is an accuser, the court shall be convened by superior competent authority and may in any case be convened by a superior authority if considered desirable by the superior competent authority.

**322.024 Article 24—Who may convene summary courts-martial.** (1) Summary courts-martial may be convened by any of the following:

- (a) Any person who may convene a general or special court-martial.

- (b) The commanding officer of a detached company or other detachment, or corresponding unit of the army national guard.

- (c) The commanding officer of a detached squadron or other detachment, or corresponding unit of the air national guard.

- (d) The commanding officer or officer in charge of any other command when empowered by the adjutant general.

(2) When only one commissioned officer is present with a command or detachment that officer shall be the summary court-martial of that command or detachment and shall hear and determine all summary court-martial cases. Summary courts-martial may, however, be convened in any case by superior competent authority if considered desirable by that authority.

**322.025 Article 25—Who may serve as a member on courts-martial.** (1) Any commissioned officer of the state military forces is eligible to serve on all courts-martial for the trial of any person subject to this code.

(2) Any warrant officer of the state military forces is eligible to serve on general and special courts-martial for the trial of any person subject to this code, other than a commissioned officer.

(3) Any enlisted member of the state military forces who is not a member of the same unit as the accused is eligible to serve on general and special courts-martial for the trial of any enlisted member subject to this code, but that member shall serve as a member of a court only if, before the conclusion of a session called by the military judge under s. 322.039 (1) prior to trial or, in the absence of a session, before the court is assembled for the trial of the accused, the accused personally has requested orally on the record or in writing that enlisted members serve on it. After a request, the accused may not be tried by a general or special court-martial the membership of which does not include enlisted members in a number comprising at least one-third of the total membership of the court, unless eligible enlisted members cannot be obtained on account of physical conditions or military exigencies. If the members cannot be obtained, the court may be assembled and the trial held without them, but the convening authority shall make a detailed written statement, to be appended to the record, stating why they could not be obtained.

(4) When it can be avoided, no person subject to this code may be tried by a court-martial any member of which is junior to the accused in rank or grade.

(5) When convening a court-martial, the convening authority shall detail members of the state military forces as, in the convening authority's opinion, are best qualified for the duty by reason of age, education, training, experience, length of service, and judicial temperament. No member of the state military forces is eligible to serve as a member of a general or special court-martial when

that member is the accuser, a witness, or has acted as investigating officer or as counsel in the same case.

(6) Before a court-martial is assembled for the trial of a case, the convening authority may excuse a member of the court from participating in the case.

(7) The convening authority may delegate the authority under this section to a judge advocate or to any other principal assistant.

(8) In this section, "unit" means any regularly organized body of the state military forces not larger than a company, a squadron, a division of the naval militia, or a body corresponding to one of them.

**322.026 Article 26—Military judge of a general or special court-martial.** (1) A military judge shall be detailed to each general and special court-martial. The military judge shall preside over each open session of the court-martial to which the military judge has been detailed.

(2) A military judge shall meet all of the following qualifications:

(a) Be a commissioned officer of an organized state military force.

(b) Be an attorney licensed to practice in this state or be a member of the bar of a federal court for at least 5 years.

(c) Certified as qualified for duty as a military judge by the senior force judge advocate which is the same force as the accused.

(3) In the instance when a military judge is not an attorney licensed to practice in this state, the military judge shall be deemed admitted on motion, subject to filing with the senior force judge advocate of the same force as the accused setting forth the qualifications provided in sub. (2).

(4) The military judge of a general or special court-martial shall be designated by the state senior force judge advocate of the same force as the accused if possible, or otherwise by the senior of the senior force judge advocates, or a designee, for detail by the convening authority. Neither the convening authority nor any staff member of the convening authority shall prepare or review any report concerning the effectiveness, fitness, or efficiency of the military judge so detailed, which relates to performance of duty as a military judge.

(5) No person is eligible to act as military judge in a case if that person is the accuser or a witness, or has acted as investigating officer, trial counsel, or defense counsel in the same case.

(6) The military judge of a court-martial may not consult with the members of the court except in the presence of the accused, trial counsel, and defense counsel nor vote with the members of the court.

**322.027 Article 27—Detail of trial counsel and defense counsel.** (1) For each general and special court-martial the authority convening the court shall detail trial

counsel, defense counsel, and assistants as are appropriate.

(2) No person who has acted as investigating officer, military judge, witness or court member in any case may act later as trial counsel, assistant trial counsel, or, unless expressly requested by the accused, as defense counsel or assistant or associate defense counsel in the same case. No person who has acted for the prosecution may act later in the same case for the defense nor may any person who has acted for the defense act later in the same case for the prosecution.

(3) Except as provided in sub. (4), trial counsel or defense counsel detailed for a general or special court-martial must meet all of the following:

(a) A judge advocate as defined in this code.

(b) In the case of trial counsel, an attorney licensed to practice in this state.

(4) In the instance when a defense counsel is not an attorney licensed to practice in this state, the defense counsel shall be deemed admitted on motion, subject to filing with the military judge setting forth the qualifications that counsel is all of the following:

(a) Commissioned officer of the armed forces of the United States or a component thereof.

(b) Member in good standing of the bar of the highest court of another state.

(c) Certified as a judge advocate in the Judge Advocate General's Corps of the army, air force, navy, or the marine corps, or a judge advocate as defined in this code.

(5) Trial counsel detailed to a court-martial shall be considered a prosecutor under state statutes.

**322.028 Article 28—Detail or employment of reporters and interpreters.** Under regulations as may be prescribed, the convening authority of a general or special court-martial or court of inquiry shall detail or employ qualified court reporters, who shall record the proceedings of and testimony taken before that court and may detail or employ interpreters who shall interpret for the court.

**322.029 Article 29—Absent and additional members.** (1) No member of a general or special court-martial may be absent or excused after the court has been assembled for the trial of the accused unless excused as a result of a challenge, excused by the military judge for physical disability or other good cause, or excused by order of the convening authority for good cause.

(2) Whenever a general court-martial, other than a general court-martial composed of a military judge only, is reduced below 5 members, the trial may not proceed unless the convening authority details new members sufficient in number to provide not less than the applicable minimum number of 5 members. The trial may proceed with the new members present after the recorded evidence previously introduced before the members of the



court has been read to the court in the presence of the military judge, the accused, and counsel for both sides.

(3) Whenever a special court-martial, other than a special court-martial composed of a military judge only, is reduced below 3 members, the trial may not proceed unless the convening authority details new members sufficient in number to provide not less than 3 members, unless the accused waives the number of members. The trial shall proceed with the new members present as if no evidence had been introduced previously at the trial, unless a verbatim record of the evidence previously introduced before the members of the court or a stipulation is read to the court in the presence of the military judge, the accused, and counsel for both sides.

(4) If the military judge of a court-martial composed of a military judge only is unable to proceed with the trial because of physical disability, as a result of a challenge, or for other good cause, the trial shall proceed, subject to any applicable conditions of s. 322.016 (1) (b) or (2) (b), after the detail of a new military judge as if no evidence had previously been introduced, unless a verbatim record of the evidence previously introduced or a stipulation is read in court in the presence of the new military judge, the accused, and counsel for both sides.

#### SUBCHAPTER VI

#### PRETRIAL PROCEDURE

##### **322.030 Article 30—Charges and specifications.**

(1) Charges and specifications shall be signed by a person subject to this code under oath before a commissioned officer authorized by s. 322.136 (1) to administer oaths and shall state all of the following:

(a) The signer has personal knowledge of, or has investigated, the matters set forth in the charges and specifications.

(b) The facts are true to the best of the signer's knowledge and belief.

(2) Upon the preferring of charges, the proper authority shall take immediate steps to determine what disposition should be made in the interest of justice and discipline, and the person accused shall be informed of the charges as soon as practicable.

**322.031 Article 31—Compulsory self-incrimination prohibited.** (1) No person subject to this code may compel any person to incriminate himself or herself or to answer any question the answer to which may tend to incriminate him or her.

(2) No person subject to this code may interrogate or request any statement from an accused or a person suspected of an offense without first informing that person of the nature of the accusation and advising that person that the person does not have to make any statement regarding the offense of which the person is accused or suspected and that any statement made by the person may be used as evidence against the person in a trial by court-martial.

(3) No person subject to this code may compel any person to make a statement or produce evidence before any military court if the statement or evidence is not material to the issue and may tend to degrade the person.

(4) No statement obtained from any person in violation of this section or through the use of coercion, unlawful influence, or unlawful inducement may be received in evidence against the person in a trial by court-martial.

**322.032 Article 32—Investigation.** (1) No charge or specification may be referred to a general court-martial for trial until a thorough and impartial investigation of all the matters set forth has been made. This investigation shall include inquiry as to the truth of the matter set forth in the charges, consideration of the form of charges, and a recommendation as to the disposition which should be made of the case in the interest of justice and discipline.

(2) The accused shall be advised of the charges against the accused and of the right to be represented at that investigation by counsel. The accused has the right to be represented at that investigation as provided in s. 322.038 and in regulations prescribed under that section. At that investigation, full opportunity shall be given to the accused to cross-examine witnesses against the accused, if they are available, and to present anything the accused may desire in the accused's own behalf, either in defense or mitigation, and the investigating officer shall examine available witnesses requested by the accused. If the charges are forwarded after the investigation, they shall be accompanied by a statement of the substance of the testimony taken on both sides and a copy shall be given to the accused.

(3) If an investigation of the subject matter of an offense has been conducted before the accused is charged with the offense, and if the accused was present at the investigation and afforded the opportunities for representation, cross-examination, and presentation prescribed in sub. (2), no further investigation of that charge is necessary under this section unless it is demanded by the accused after the accused is informed of the charge. A demand for further investigation entitles the accused to recall witnesses for further cross-examination and to offer any new evidence in the accused's own behalf.

(4) If evidence adduced in an investigation under this section indicates that the accused committed an uncharged offense, the investigating officer may investigate the subject matter of that offense without the accused having first been charged with the offense if the accused is afforded all of the following:

(a) Present at the investigation;

(b) Informed of the nature of each uncharged offense investigated; and

(c) Afforded the opportunities for representation, cross-examination, and presentation prescribed in sub. (2).

(5) The requirements of this section are binding on all persons administering this code but failure to follow them does not constitute jurisdictional error.

**322.033 Article 33—Forwarding of charges.** When a person is held for trial by general court-martial, the commanding officer shall within 8 days after the accused is ordered into arrest or confinement, if practicable, forward the charges, together with the investigation and allied papers, to the person exercising general court-martial jurisdiction. If that is not practicable, the commanding officer shall report in writing to that person the reasons for delay.

**322.034 Article 34—Advice of judge advocate and reference for trial.** (1) Before directing the trial of any charge by general court-martial, the convening authority shall refer it to a judge advocate for consideration and advice. The convening authority may not refer a specification under a charge to a general court-martial for trial unless the convening authority has been advised in writing by a judge advocate that all the following conditions are met:

(a) The specification alleges an offense under this code.

(b) The specification is warranted by the evidence indicated in the report of investigation under s. 322.032, if there is a report.

(c) A court-martial would have jurisdiction over the accused and the offense.

(2) The advice of the judge advocate under sub. (1) with respect to a specification under a charge shall include a written and signed statement by the judge advocate that does all of the following:

(a) Expressing conclusions with respect to each matter set forth in sub. (1).

(b) Recommending action that the convening authority take regarding the specification.

(3) If the specification is referred for trial, the recommendation of the judge advocate shall accompany the specification.

(4) If the charges or specifications are not correct formally or do not conform to the substance of the evidence contained in the report of the investigating officer, formal corrections, and changes in the charges and specifications as are needed to make them conform to the evidence, may be made.

**322.035 Article 35—Service of charges.** The trial counsel shall serve or caused to be served upon the accused a copy of the charges. No person may, against the person's objection, be brought to trial before a general court-martial case within a period of 5 days after the service of charges upon the accused, or in a special court-martial, within a period of 3 days after the service of charges upon the accused.

#### SUBCHAPTER VII TRIAL PROCEDURE

**322.036 Article 36—Governor may prescribe regulations.** Pretrial, trial, and post-trial procedures, including modes of proof, for courts-martial cases arising under this code, and for courts of inquiry, may be prescribed by the governor by regulations, or as otherwise provided by law, which shall apply the principles of law and the rules of evidence generally recognized in military criminal cases in the courts of the armed forces but which may not be contrary to or inconsistent with this code.

**322.037 Article 37—Unlawfully influencing action of court.** (1) No authority convening a general, special, or summary court-martial, nor any other commanding officer, or officer serving on the commanding officer's staff, may censure, reprimand, or admonish the court or any member, the military judge, or counsel, with respect to the findings or sentence adjudged by the court or with respect to any other exercise of its or their functions in the conduct of the proceedings. No person subject to this code may attempt to coerce or, by any unauthorized means, influence the action of a court-martial or court of inquiry or any member, in reaching the findings or sentence in any case, or the action of any convening, approving, or reviewing authority with respect to their judicial acts. The foregoing provisions of the subsection shall not apply with respect to the any of the following:

(a) General instructional or informational courses in military justice if the courses are designed solely for the purpose of instructing members of a command in the substantive and procedural aspects of courts-martial.

(b) Statements and instructions given in open court by the military judge, summary court-martial officer, or counsel.

(2) In the preparation of an effectiveness, fitness, or efficiency report, or any other report or document used in whole or in part for the purpose of determining whether a member of the state military forces is qualified to be advanced in grade, or in determining the assignment or transfer of a member of the state military forces, or in determining whether a member of the state military forces should be retained on active status, no person subject to this code may, in preparing any report, do any of the following:

(a) Consider or evaluate the performance of duty of any member as a member of a court-martial or witness.

(b) Give a less favorable rating or evaluation of any counsel of the accused because of zealous representation before a court-martial.

**322.038 Article 38—Duties of trial counsel and defense counsel.** (1) The trial counsel of a general or special court-martial shall be an attorney licensed to practice in this state and shall prosecute in the name of the state, and shall, under the direction of the court, prepare the record of the proceedings.

(2) (a) The accused has the right to be represented in defense before a general or special court-martial or at an investigation under s. 322.032.

(b) The accused may be represented by civilian counsel at the provision and expense of the accused.

(c) The accused may be represented by any of the following:

1. Military counsel detailed under s. 322.027.

2. Military counsel of the accused's own selection if that counsel is reasonably available as determined under par. (g).

(d) If the accused is represented by civilian counsel, military counsel detailed or selected under par. (c) shall act as associate counsel unless excused by military judge at the request of the accused.

(e) Except as provided under par. (f), if the accused is represented by military counsel of his or her own selection under par. (c) 2., any military counsel detailed under par. (c) 1. shall be excused.

(f) The accused is not entitled to be represented by more than one military counsel. However, the person authorized under regulations prescribed under s. 322.027 to detail counsel, in that person's sole discretion may do any of the following:

1. Detail additional military counsel as assistant defense counsel.

2. If the accused is represented by military counsel of the accused's own selection under par. (c) 2., may approve a request from the accused that military counsel detailed under par. (c) 1. act as associate defense counsel.

(g) The senior force judge advocate of the same force of which the accused is a member, shall determine whether the military counsel selected by an accused is reasonably available.

(3) In any court-martial proceeding resulting in a conviction, the defense counsel may do any of the following:

(a) Forward for attachment to the record of proceedings a brief of matters as counsel determines should be considered in behalf of the accused on review, including any objection to the contents of the record which counsel considers appropriate.

(b) Assist the accused in the submission of any matter under s. 322.060.

(c) Take other action authorized by this code.

**322.039 Article 39—Sessions.** (1) At any time after the service of charges which have been referred for trial to a court-martial composed of a military judge and members, the military judge may, subject to s. 322.035, call the court into session without the presence of the members for the purpose of any of the following:

(a) Hearing and determining motions raising defenses or objections which are capable of determination without trial of the issues raised by a plea of not guilty.

(b) Hearing and ruling upon any matter which may be ruled upon by the military judge under this code, whether or not the matter is appropriate for later consideration or decision by the members of the court.

(c) Holding the arraignment and receiving the pleas of the accused.

(d) Performing any other procedural function which does not require the presence of the members of the court under this code.

(2) These proceedings shall be conducted in the presence of the accused, the defense counsel, and the trial counsel and shall be made a part of the record. These proceedings may be conducted notwithstanding the number of court members and without regard to s. 322.029.

(3) When the members of a court-martial deliberate or vote, only the members may be present. All other proceedings, including any other consultation of the members of the court with counsel or the military judge, shall be made a part of the record and shall be in the presence of the accused, the defense counsel, the trial counsel, and the military judge.

**322.040 Article 40—Continuances.** The military judge of a court-martial or a summary court-martial may, for reasonable cause, grant a continuance to any party for time, and as often, as may appear to be just.

**322.041 Article 41—Challenges.** (1) (a) The military judge and members of a general or special court-martial may be challenged by the accused or the trial counsel for cause stated to the court. The military judge or the court shall determine the relevancy and validity of challenges for cause and may not receive a challenge to more than one person at a time. Challenges by the trial counsel shall ordinarily be presented and decided before those by the accused are offered.

(b) If exercise of a challenge for cause reduces the court below the minimum number of members required by s. 322.016, all parties shall, notwithstanding s. 322.029, either exercise or waive any challenge for cause then apparent against the remaining members of the court before additional members are detailed to the court. However, peremptory challenges shall not be exercised at that time.

(2) (a) Each accused and the trial counsel are entitled initially to one peremptory challenge of members of the court. The military judge may not be challenged except for cause.

(b) If exercise of a peremptory challenge reduces the court below the minimum number of members required by s. 322.016, the parties shall, notwithstanding s. 322.029, either exercise or waive any remaining peremptory challenge, not previously waived, against the remaining members of the court before additional members are detailed to the court.

(c) Whenever additional members are detailed to the court, and after any challenges for cause against addi-

tional members are presented and decided, each accused and the trial counsel are entitled to one peremptory challenge against members not previously subject to peremptory challenge.

**322.042 Article 42—Oaths or affirmations.** (1) Before performing their respective duties, military judges, general and special courts-martial members, trial counsel, defense counsel, reporters, and interpreters shall take an oath or affirmation in the presence of the accused to perform their duties faithfully. The form of the oath or affirmation, the time and place of the taking, the manner of recording the same, and whether the oath or affirmation shall be taken for all cases in which these duties are to be performed or for a particular case, shall be as prescribed in regulation or as provided by law. These regulations may provide that an oath or affirmation to perform faithfully the duties as a military judge, trial counsel, or defense counsel may be taken at any time by any judge advocate or other person certified or designated to be qualified or competent for the duty, and if an oath or affirmation is taken, it need not again be taken at the time the judge advocate or other person is detailed to that duty.

(2) Each witness before a court-martial shall be examined under oath or affirmation.

**322.043 Article 43—Statute of limitations.** (1) Except as otherwise provided in this section, a person charged with any offense is not liable to be tried by court-martial or punished under s. 322.015 if the offense was committed more than 3 years before the receipt of sworn charges and specifications by an officer exercising court-martial jurisdiction over the command or before the imposition of punishment under s. 322.015.

(2) Periods in which the accused is absent without authority or fleeing from justice shall be excluded in computing the period of limitation prescribed in this section.

(3) Periods in which the accused was absent from territory in which the state has the authority to apprehend him or her, or in the custody of civil authorities, or in the hands of the enemy, shall be excluded in computing the period of limitation prescribed in this section.

(4) When the United States is at war based on a congressional declaration or by presidential declaration under the Global War on Terror, the running of any statute of limitations is suspended until 2 years after the termination of hostilities, as proclaimed by the president or by a joint resolution of congress, and is applicable to any offense under this code under any of the following circumstances:

(a) Involving fraud or attempted fraud against the United States, any state, or any agency of either in any manner, whether by conspiracy or not.

(b) Committed in connection with the acquisition, care, handling, custody, control, or disposition of any real or personal property of the United States or any state.

(c) Committed in connection with the negotiation, procurement, award, performance, payment, interim financing, cancellation, or other termination or settlement, of any contract, subcontract, or purchase order which is connected with or related to the prosecution of the war, or with any disposition of termination inventory by any war contractor or government agency.

(5) (a) If charges or specifications are dismissed as defective or insufficient for any cause and the period prescribed by the applicable statute of limitations has expired, or will expire within 180 days after the date of dismissal of the charges and specifications, trial and punishment under new charges and specifications are not barred by the statute of limitations if the conditions specified in par. (b) are met.

(b) The conditions referred to in par. (a) are that the new charges and specifications satisfy all of the following:

1. Be received by an officer exercising summary court-martial jurisdiction over the command within 180 days after the dismissal of the charges or specifications.

2. Allege the same acts or omissions that were alleged in the dismissed charges or specifications, or allege acts or omissions that were included in the dismissed charges or specifications.

**322.044 Article 44—Former jeopardy.** (1) No person may, without his or her consent, be tried a 2nd time for the same offense.

(2) No proceeding in which an accused has been found guilty by a court-martial upon any charge or specification is a trial under this section until the finding of guilty has become final after review of the case has been fully completed.

(3) A proceeding which, after the introduction of evidence but before a finding, is dismissed or terminated by the convening authority or on motion of the prosecution for failure of available evidence or witnesses without any fault of the accused is a trial under this section.

**322.045 Article 45—Pleas of the accused.** (1) If an accused after arraignment makes an irregular pleading, or after a plea of guilty sets up matter inconsistent with the plea, or if it appears that the accused has entered the plea of guilty improvidently or through lack of understanding of its meaning and effect, or if the accused fails or refuses to plead, a plea of not guilty shall be entered in the record, and the court shall proceed as though the accused had pleaded not guilty.

(2) With respect to any charge or specification to which a plea of guilty has been made by the accused and accepted by the military judge or by a court-martial without a military judge, a finding of guilty of the charge or specification may be entered immediately without vote. This finding shall constitute the finding of the court unless the plea of guilty is withdrawn prior to announcement of the sentence, in which event, the proceedings



shall continue as though the accused had pleaded not guilty.

**322.046 Article 46—Opportunity to obtain witnesses and other evidence.** The trial counsel, the defense counsel, and the court-martial shall have equal opportunity to obtain witnesses and other evidence as prescribed by regulations and provided by law. Process issued in court-martial cases to compel witnesses to appear and testify and to compel the production of other evidence shall apply the principles of law and the rules of courts-martial generally recognized in military criminal cases in the courts of the armed forces of the United States, but which may not be contrary to or inconsistent with this code. Process shall run to any part of the United States, or the territories, commonwealths, and possessions, and may be executed by civil officers as prescribed by the laws of the place where the witness or evidence is located or of the United States.

**322.047 Article 47—Refusal to appear or testify.**

(1) Any person not subject to this code may be punished by the military court in the same manner as a court of the state, if all of the following apply to that person:

(a) Has been duly subpoenaed to appear as a witness or to produce books and records before a court-martial or court of inquiry, or before any military or civil officer designated to take a deposition to be read in evidence before a court.

(b) Has been duly paid or tendered the fees and mileage of a witness at the rates allowed to witnesses attending a court of the state.

(c) Willfully neglects or refuses to appear, or refuses to qualify as a witness or to testify or to produce any evidence which that person may have been legally subpoenaed to produce.

(2) The fees and mileage of witnesses shall be advanced or paid out of the appropriations for the compensation of witnesses.

**322.048 Article 48—Contempt.** A military judge may punish for contempt any person who uses any menacing word, sign, or gesture in its presence, or who disturbs its proceedings by any riot or disorder. A person subject to this code may be punished for contempt by confinement not to exceed 30 days or a fine of \$100, or both. A person not subject to this code may be punished for contempt by a military court in the same manner as a court of the state.

**322.049 Article 49—Depositions.** (1) At any time after charges have been signed as provided in s. 322.030, any party may take oral or written depositions unless the military judge or summary court-martial officer hearing the case or, if the case is not being heard, an authority competent to convene a court-martial for the trial of those charges forbids it for good cause.

(2) The party at whose instance a deposition is to be taken shall give to every other party reasonable written notice of the time and place for taking the deposition.

(3) A duly authenticated deposition taken upon reasonable notice to the other parties, so far as otherwise admissible under the rules of evidence, may be read in evidence or, in the case of audiotape, videotape, digital image or file, or similar material, may be played in evidence before any military court, if any of the following apply:

(a) The witness resides or is beyond the State in which the court is ordered to sit, or beyond one hundred miles from the place of trial or hearing;

(b) The witness by reason of death, age, sickness, bodily infirmity, imprisonment, military necessity, non amenability to process, or other reasonable cause, is unable or refuses to appear and testify in person at the place of trial or hearing.

(c) The present whereabouts of the witness is unknown.

**322.050 Article 50—Admissibility of records of courts of inquiry.** (1) In any case not extending to the dismissal of a commissioned officer, the sworn testimony, contained in the duly authenticated record of proceedings of a court of inquiry, of a person whose oral testimony cannot be obtained, may, if otherwise admissible under the rules of evidence, be read in evidence by any party before a court-martial if the accused was a party before the court of inquiry and if the same issue was involved or if the accused consents to the introduction of evidence.

(2) Testimony may be read in evidence only by the defense in cases extending to the dismissal of a commissioned officer.

(3) Testimony may also be read in evidence before a court of inquiry.

**322.0505 Article 50a—Defense of mental disease or defect.** (1) The accused has an affirmative defense of mental disease or defect in a trial by court-martial if, at the time of the commission of the acts constituting the offense, the accused, as a result of a mental disease or defect, lacked substantial capacity either to appreciate the wrongfulness of his or her conduct or to conform his or her conduct to the requirements of the law. Mental disease or defect does not otherwise constitute a defense.

(2) The accused has the burden of proving the defense of mental disease or defect to a reasonable certainty by the greater weight of the credible evidence.

(3) Whenever lack of mental disease or defect of the accused with respect to an offense is properly at issue, the military judge shall instruct the members of the military court as to the defense of mental disease or defect under this section and charge them to find the accused any one of the following:

(a) Guilty.

(b) Not guilty.

(c) Not guilty by reason of mental disease or defect.

(4) Sub. (3) does not apply to a court-martial composed of a military judge only. In the case of a court-mar-

tial composed of a military judge only or a summary court-martial officer, whenever mental disease or defect of the accused with respect to an offense is properly at issue, the military judge or summary court-martial officer shall find the accused of any of the following:

- (a) Guilty.
- (b) Not guilty.
- (c) Not guilty by reason of mental disease or defect.

(5) Notwithstanding the provisions of s. 322.052, the accused shall be found not guilty by reason of mental disease or defect if any of the following apply:

(a) A majority of the members of the court-martial present at the time the vote is taken determines that the defense of mental disease or defect has been established.

(b) In the case of a court-martial composed of a military judge only or a summary court-martial officer, the military judge or summary court-martial officer determines that the defense of mental disease or defect has been established.

**322.051 Article 51—Voting and rulings.** (1) Voting by members of a general or special court-martial on the findings and on the sentence shall be by secret written ballot. The junior member of the court shall count the votes. The count shall be checked by the president, who shall as soon as possible announce the result of the ballot to the members of the court.

(2) The military judge shall rule upon all questions of law and all interlocutory questions arising during the proceedings. Any ruling made by the military judge upon any question of law or any interlocutory question other than the factual issue of mental disease or defect of the accused is final and constitutes the ruling of the court. However, the military judge may change the ruling at any time during the trial. Unless the ruling is final, if any member objects, the court shall be cleared and closed and the question decided by a voice vote as provided in s. 322.052, beginning with the junior in rank.

(3) Before a vote is taken on the findings, the military judge shall, in the presence of the accused and counsel, instruct the members of the court as to the elements of the offense and charge them with all of the following:

(a) The accused shall be presumed to be innocent until his or her guilt is established by legal and competent evidence beyond reasonable doubt.

(b) The case being considered, if there is a reasonable doubt as to the guilt of the accused, the doubt must be resolved in favor of the accused and the accused must be acquitted.

(c) If there is a reasonable doubt as to the degree of guilt, the finding shall be in a lower degree as to which there is no reasonable doubt.

(d) The burden of proof to establish the guilt of the accused beyond reasonable doubt is upon the state.

(4) Subsections (1), (2), and (3) do not apply to a court-martial composed of a military judge only. The

military judge of a court-martial shall determine all questions of law and fact arising during the proceedings and, if the accused is convicted, adjudge an appropriate sentence. The military judge of a court-martial shall make a general finding and shall in addition, on request, find the facts specially. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact appear.

**322.052 Article 52—Number of votes required.**

(1) No person may be convicted of an offense except as provided in s. 322.045 (2) or s. 322.051 (4) or by the concurrence of two-thirds of the members present at the time the vote is taken.

(2) All other questions to be decided by the members of a general or special court-martial shall be determined by a majority vote, but a determination to reconsider a sentence, with a view toward decreasing it, may be made by any lesser vote which indicates that the reconsideration is not opposed by the number of votes required for that finding or sentence. A tie vote on a challenge disqualifies the member challenged. A tie vote on a motion relating to the question of the accused's mental disease or defect is a determination against the accused. A tie vote on any other question is a determination in favor of the accused.

**322.053 Article 53—Court to announce action.** A court-martial shall announce its findings and sentence to the parties as soon as determined.

**322.054 Article 54—Record of trial.** (1) Each general and special court-martial shall keep a separate record of the proceedings in each case brought before it, and the record shall be authenticated by the signature of the military judge. If the record cannot be authenticated by the military judge by reason of his or her death, disability, or absence, it shall be authenticated by the signature of the trial counsel or by that of a member, if the trial counsel is unable to authenticate it by reason of his or her death, disability, or absence. In a court-martial consisting of only a military judge, the record shall be authenticated by the court reporter under the same conditions which would impose a duty on a member under this subsection.

(2) A complete verbatim record of the proceedings and testimony shall be prepared in each general and special court-martial case resulting in a conviction, and in all other court-martial cases, the record shall contain matters as may be prescribed by regulations.

(3) Each summary court-martial shall keep a separate record of the proceedings in each case, and the record shall be authenticated in the manner as may be prescribed by regulations.

(4) A copy of the record of the proceedings of each general and special court-martial shall be given to the accused as soon as it is authenticated.

SUBCHAPTER VIII  
SENTENCES

**322.055 Article 55—Cruel and unusual punishments prohibited.** Punishment by flogging, or by branding, marking, or tattooing on the body, or any other cruel or unusual punishment may not be adjudged by a court-martial or inflicted upon any person subject to this code. The use of irons, single or double, except for the purpose of safe custody, is prohibited.

**322.056 Article 56—Maximum limits.** (1) The punishment which a court-martial may direct for an offense may not exceed 10 years confinement.

(2) A conviction by a general court-martial of any military offense for which an accused may receive a sentence of confinement for more than 1 year is a felony offense.

(3) Except for convictions by a summary court-martial, all other offenses are misdemeanors.

(4) A conviction by a summary court-martial is not a criminal conviction.

(5) The limits of punishment for violations of the punitive sections under Subch. X shall be prescribed by the governor according to ss. 322.018, to 322.020, but under no instance shall any punishment exceed that authorized by this code.

**322.057 Article 57—Effective date of sentences.**

(1) Whenever a sentence of a court-martial as lawfully adjudged and approved includes a forfeiture of pay or allowances in addition to confinement not suspended, the forfeiture may apply to pay or allowances becoming due on or after the date the sentence is approved by the convening authority. No forfeiture may extend to any pay or allowances accrued before that date.

(2) Any period of confinement included in a sentence of a court-martial begins to run from the date the sentence is adjudged by the court-martial, but periods during which the sentence to confinement is suspended or deferred shall be excluded in computing the service of the term of confinement.

(3) All other sentences of courts-martial are effective on the date ordered executed.

**322.0575 Article 57a—Deferment of sentences.**

(1) On application by an accused who is under sentence to confinement that has not been ordered executed, the convening authority or, if the accused is no longer under that person's jurisdiction, the person exercising general court-martial jurisdiction over the command to which the accused is currently assigned, may in that person's sole discretion defer service of the sentence to confinement. The deferment shall terminate when the sentence is ordered executed. The deferment may be rescinded at any time by the person who granted it or, if the accused is no longer under that person's jurisdiction, by the person exercising general court-martial jurisdiction over the command to which the accused is currently assigned.

(2) (a) In any case in which a court-martial sentences an accused referred to in par. (b) to confinement, the convening authority may defer the service of the sentence to confinement, without the consent of the accused, until after the accused has been permanently released to the state military forces by a state, the United States, or a foreign country referred to in that paragraph.

(b) Paragraph (a) applies to a person subject to this code who meets all of the following:

1. While in the custody of a state, the United States, or a foreign country is temporarily returned by that state, the United States, or a foreign country to the state military forces for trial by court-martial.

2. After the court-martial, is returned to that state, the United States, or a foreign country under the authority of a mutual agreement or treaty, as the case may be.

(3) In any case in which a court-martial sentences an accused to confinement and the sentence to confinement has been ordered executed, but in which review of the case under s. 322.0675 is pending, the adjutant general may defer further service of the sentence to confinement while that review is pending.

(4) A sentence of confinement shall address work release privileges.

**322.058 Article 58—Conditions of confinement.**

(1) A sentence of confinement adjudged by a court-martial, whether or not the sentence includes discharge or dismissal, and whether or not the discharge or dismissal has been executed, may be carried into execution by confinement in any place authorized by this code. Persons so confined are subject to the same discipline and treatment as persons regularly confined or committed to that place of confinement.

(2) The omission of hard labor as a sentence authorized under this code does not deprive the state confinement facility from employing it, if it otherwise is within the authority of that facility to do so.

(3) No place of confinement may require payment of any fee or charge for receiving or confining a person except as otherwise provided by law.

**322.0585 Article 58a—Sentences: reduction in enlisted grade upon approval.** (1) A court-martial sentence of an enlisted member in a pay grade above E-1, as approved by the convening authority, that includes a dishonorable or bad-conduct discharge, or confinement, reduces that member to pay grade E-1, effective on the date of that approval.

(2) If the sentence of a member who is reduced in pay grade under sub. (1) is set aside or disapproved, or, as finally approved, does not include any punishment named in sub. (1), the rights and privileges of which the person was deprived because of that reduction shall be restored, including pay and allowances.

**322.0587 Article 58b—Sentences: forfeiture of pay and allowances during confinement.** (1) A court-

martial sentence described in sub. (2) shall result in the forfeiture of pay, or of pay and allowances, due that member during any period of confinement or parole. The forfeiture subject to this section shall take effect on the date determined under s. 322.057 (1) and may be deferred as provided by that subsection. The pay and allowances forfeited, in the case of a general court-martial, shall be all pay and allowances due that member during the period and, in the case of a special court-martial, shall be two-thirds of all pay due that member during the period.

(2) A sentence covered by this section is any sentence that includes any of the following:

(a) Confinement for more than 6 months.

(b) Confinement for 6 months or less and a dishonorable or bad-conduct discharge or dismissal.

(3) In a case involving an accused who has dependents, the convening authority or other person acting under s. 322.060 may waive any or all of the forfeitures of pay and allowances required by sub. (1) for a period not to exceed 6 months. Any amount of pay or allowances that, except for a waiver under this subsection, would be forfeited shall be paid, as the convening authority or other person taking action directs, to the dependents of the accused.

(4) If the sentence of a member who forfeits pay and allowances under sub. (1) is set aside or disapproved or, as finally approved, does not provide for a punishment referred to in sub. (1) (b), the member shall be paid the pay and allowances that the member would have been paid, except for the forfeiture, for the period during which the forfeiture was in effect.

#### SUBCHAPTER IX

#### POST-TRIAL PROCEDURE AND REVIEW OF COURTS-MARTIAL

**322.059 Article 59—Error of law; lesser included offense.** (1) A finding or sentence of a court-martial may not be held incorrect on the ground of an error of law unless the error materially prejudices the substantial rights of the accused.

(2) Any reviewing authority with the power to approve or affirm a finding of guilty may approve or affirm, instead, so much of the finding as includes a lesser included offense.

**322.060 Article 60—Action by the convening authority.** (1) The findings and sentence of a court-martial shall be reported promptly to the convening authority after the announcement of the sentence.

(2) The accused may submit to the convening authority matters for consideration by the convening authority with respect to the findings and the sentence. Any submission shall be in writing. Except in a summary court-martial case, a submission shall be made within 10 days after the accused has been given an authenticated record of trial and, if applicable, the recommendation of a judge advocate under sub. (9). In a summary court-martial

case, a submission shall be made within 7 days after the sentence is announced.

(3) If the accused shows that additional time is required for the accused to submit matters, the convening authority or other person taking action under this section, for good cause, may extend the applicable period for not more than an additional 20 days.

(4) In a summary court-martial case, the accused shall be promptly provided a copy of the record of trial for use in preparing a submission.

(5) The accused may waive the right to make a submission to the convening authority under sub. (2). A waiver must be made in writing and may not be revoked. The time within which the accused may make a submission under this subsection shall be deemed to have expired upon the submission of a waiver to the convening authority.

(6) The authority under this section to modify the findings and sentence of a court-martial is a matter of command prerogative involving the sole discretion of the convening authority. If it is impractical for the convening authority to act, the convening authority shall forward the case to a person exercising general court-martial jurisdiction who may take action under this section.

(7) Action on the sentence of a court-martial shall be taken by the convening authority or by another person authorized to act under this section. Action may be taken only after consideration of any matters submitted by the accused under sub. (2) or after the time for submitting matters expires, whichever is earlier. The convening authority or other person taking action, in that person's sole discretion may approve, disapprove, commute, or suspend the sentence in whole or in part.

(8) Action on the findings of a court-martial by the convening authority or other person acting on the sentence is not required. However, the person, in the person's sole discretion may do any of the following:

(a) Dismiss any charge or specification by setting aside a finding of guilty.

(b) Change a finding of guilty to a charge or specification to a finding of guilty to an offense that is a lesser included offense of the offense stated in the charge or specification.

(9) Before acting under this section on any general or special court-martial case in which there is a finding of guilt, the convening authority or other person taking action under this section shall obtain and consider the written recommendation of a judge advocate. The convening authority or other person taking action under this section shall refer the record of trial to the judge advocate, and the judge advocate shall use the record in the preparation of the recommendation. The recommendation of the judge advocate shall include matters as may be prescribed by regulation and shall be served on the accused, who may submit any matter in response. Failure



to object in the response to the recommendation or to any matter attached to the recommendation waives the right to object.

(10) The convening authority or other person taking action under this section, in the person's sole discretion, may order a proceeding in revision or a rehearing.

(11) A proceeding in revision may be ordered if there is an apparent error or omission in the record or if the record shows improper or inconsistent action by a court-martial with respect to the findings or sentence that can be rectified without material prejudice to the substantial rights of the accused. In no case, however, may a proceeding in revision perform any of the following:

(a) Reconsider a finding of not guilty of any specification or a ruling which amounts to a finding of not guilty.

(b) Reconsider a finding of not guilty of any charge, unless there has been a finding of guilty under a specification laid under that charge, which sufficiently alleges a violation of some section of this code.

(c) Increase the severity of the sentence unless the sentence prescribed for the offense is mandatory.

(12) A rehearing may be ordered by the convening authority or other person taking action under this section if that person disapproves the findings and sentence and states the reasons for disapproval of the findings. If a person disapproves the findings and sentence and does not order a rehearing, that person shall dismiss the charges. A rehearing as to the findings may not be ordered where there is a lack of sufficient evidence in the record to support the findings. A rehearing as to the sentence may be ordered if the convening authority or other person taking action under this subsection disapproves the sentence.

**322.061 Article 61—Withdrawal of appeal.** (1) In each case subject to appellate review under this code, the accused may file with the convening authority a statement expressly withdrawing the right of the accused to appeal. A withdrawal shall be signed by both the accused and his or her defense counsel and must be filed in accordance with appellate procedures under ch. 809.

(2) The accused may withdraw an appeal at any time in accordance with appellate procedures under ch. 809.

**322.062 Article 62—Appeal by the state.** (1) In a trial by court-martial in which a punitive discharge may be adjudged, the state may appeal any of the following, other than a finding of not guilty with respect to the charge or specification by the members of the court-martial, or by a judge in a bench trial, so long as it is not made in reconsideration:

(a) An order or ruling of the military judge which terminates the proceedings with respect to a charge or specification.

(b) An order or ruling which excludes evidence that is substantial proof of a fact material in the proceeding.

(c) An order or ruling which directs the disclosure of classified information.

(d) An order or ruling which imposes sanctions for nondisclosure of classified information.

(e) A refusal of the military judge to issue a protective order sought by the State to prevent the disclosure of classified information.

(f) A refusal by the military judge to enforce an order described in par. (e) that has previously been issued by appropriate authority.

(2) An appeal of an order or ruling may not be taken unless the trial counsel provides the military judge with written notice of appeal from the order or ruling within 72 hours of the order or ruling. Notice shall include a certification by the trial counsel that the appeal is not taken for the purpose of delay and, if the order or ruling appealed is one which excludes evidence, that the evidence excluded is substantial proof of a fact material in the proceeding.

(3) An appeal under this section shall be diligently prosecuted as provided by law.

(4) An appeal under this section shall be forwarded to the court prescribed in s. 322.0675. In ruling on an appeal under this section, that court may act only with respect to matters of law.

(5) Any period of delay resulting from an appeal under this section shall be excluded in deciding any issue regarding denial of a speedy trial unless an appropriate authority determines that the appeal was filed solely for the purpose of delay with the knowledge that it was totally frivolous and without merit.

**322.063 Article 63—Rehearings.** Each rehearing under this code shall take place before a court-martial composed of members not members of the court-martial which first heard the case. Upon a rehearing the accused may not be tried for any offense of which he or she was found not guilty by the first court-martial, and no sentence in excess of or more severe than the original sentence may be approved, unless the sentence is based upon a finding of guilty of an offense not considered upon the merits in the original proceedings, or unless the sentence prescribed for the offense is mandatory. If the sentence approved after the first court-martial was in accordance with a pretrial agreement and the accused at the rehearing changes a plea with respect to the charges or specifications upon which the pretrial agreement was based, or otherwise does not comply with the pretrial agreement, the approved sentence as to those charges or specifications may include any punishment not in excess of that lawfully adjudged at the first court-martial.

**322.064 Article 64—Review by the senior force judge advocate.** (1) Each general and special court-martial case in which there has been a finding of guilty shall be reviewed by the senior force judge advocate, or a designee. The senior force judge advocate, or designee, may not review a case under this subsection if that person has acted in the same case as an accuser, investigating

officer, member of the court, military judge, or counsel or has otherwise acted on behalf of the prosecution or defense. The senior force judge advocate's review shall be in writing and shall contain all of the following:

(a) Conclusions regarding all of the following:

1. The court had jurisdiction over the accused and the offense.

2. The charge and specification stated an offense.

3. The sentence was within the limits prescribed as a matter of law.

(b) A response to each allegation of error made in writing by the accused.

(c) If the case is sent for action under sub. (2), a recommendation as to the appropriate action to be taken and an opinion as to whether corrective action is required as a matter of law.

(2) The record of trial and related documents in each case reviewed under sub. (1) shall be sent for action to the adjutant general, under any of the following circumstances:

(a) The judge advocate who reviewed the case recommends corrective action.

(b) The sentence approved under s. 322.060 extends to dismissal, a bad-conduct or dishonorable discharge, or confinement for more than 6 months.

(c) Action is otherwise required by regulations of the adjutant general.

(3) The adjutant general may do any of the following:

(a) Disapprove or approve the findings or sentence, in whole or in part.

(b) Remit, commute, or suspend the sentence in whole or in part.

(c) Except where the evidence was insufficient at the trial to support the findings, order a rehearing on the findings, on the sentence, or on both.

(d) Dismiss the charges.

(4) If a rehearing is ordered but the convening authority finds a rehearing impracticable, the convening authority shall dismiss the charges.

(5) If the opinion of the senior force judge advocate, or designee, in the senior force judge advocate's review under sub. (1) is that corrective action is required as a matter of law and if the adjutant general does not take action that is at least as favorable to the accused as that recommended by the judge advocate, the record of trial and action thereon shall be sent to the governor for review and action as deemed appropriate.

(6) The senior force judge advocate, or a designee, may review any case in which there has been a finding of not guilty of all charges and specifications. The senior force judge advocate, or designee, may not review a case under this subsection if that person has acted in the same case as an accuser, investigating officer, member of the court, military judge, or counsel or has otherwise acted on behalf of the prosecution or defense. The senior force

judge advocate's review shall be limited to questions of subject matter jurisdiction.

(7) The record of trial and related documents in each case reviewed under sub. (4) shall be sent for action to the adjutant general.

(8) The adjutant general may do any of the following:

(a) When subject matter jurisdiction is found to be lacking, void the court-martial from inception, with or without prejudice to the government, as the adjutant general deems appropriate.

(b) Return the record of trial and related documents to the senior force judge advocate for appeal by the government as provided by law.

**322.065 Article 65—Disposition of records after review by the convening authority.** Except as otherwise required by this code, all records of trial and related documents shall be transmitted and disposed of as prescribed by regulation and provided by law.

**322.0675 Article 67a—Review by state appellate authority.** Decisions of a court-martial are from a court with jurisdiction to issue felony convictions and appeals are to the Wisconsin court of appeals, District IV and, if necessary, to the Wisconsin Supreme Court. The appellate procedures to be followed shall be those provided under ch. 809.

**322.070 Article 70—Appellate counsel.** (1) The senior force judge advocate shall detail a judge advocate as appellate Government counsel to represent the state in the review or appeal of cases specified in s. 322.0675 and before any federal court when requested to do so by the state attorney general. Appellate government counsel shall be an attorney licensed to practice in this state or a member in good standing of the bar of the highest court of the state to which the appeal is taken.

(2) Upon an appeal by the state, an accused has the right to be represented by detailed military counsel before any reviewing authority and before any appellate court.

(3) Upon the appeal by an accused, the accused has the right to be represented by military counsel before any reviewing authority.

(4) Upon the request of an accused entitled to be so represented, the state senior force judge advocate shall appoint a judge advocate to represent the accused in the review or appeal of cases specified in subs. (2) and (3).

(5) An accused may be represented by civilian appellate counsel at no expense to the State.

**322.071 Article 71—Execution of sentence; suspension of sentence.** (1) If the sentence of the court-martial extends to dismissal or a dishonorable or bad-conduct discharge and if the right of the accused to appellate review is not waived, and an appeal is not withdrawn under s. 322.061, that part of the sentence extending to dismissal or a dishonorable or bad-conduct discharge may not be executed until there is a final judgment

as to the legality of the proceedings. A judgment as to the legality of the proceedings is final in cases when review is completed by an appellate court prescribed in s. 322.0675, and is deemed final by the law of state where the judgment was had.

(2) If the sentence of the court-martial extends to dismissal or a dishonorable or bad conduct discharge and if the right of the accused to appellate review is waived, or an appeal is withdrawn under s. 322.061, that part of the sentence extending to dismissal or a dishonorable or bad-conduct discharge may not be executed until review of the case by the senior force judge advocate and any action on that review under s. 322.064 is completed. Any other part of a court-martial sentence may be ordered executed by the convening authority or other person acting on the case under s. 322.060 when so approved under that section.

**322.072 Article 72—Vacation of suspension.** (1) Before the vacation of the suspension of a special court-martial sentence, which as approved includes a bad-conduct discharge, or of any general court-martial sentence, the officer having special court-martial jurisdiction over the probationer shall hold a hearing on an alleged violation of probation. The probationer shall be represented at the hearing by military counsel if the probationer so desires.

(2) The record of the hearing and the recommendation of the officer having special court-martial jurisdiction shall be sent for action to the officer exercising general court-martial jurisdiction over the probationer. If the officer vacates the suspension, any unexecuted part of the sentence, except a dismissal, shall be executed, subject to applicable restrictions in this code.

(3) The suspension of any other sentence may be vacated by any authority competent to convene, for the command in which the accused is serving or assigned, a court of the kind that imposed the sentence.

**322.073 Article 73—Petition for a new trial.** At any time within 2 years after approval by the convening authority of a court-martial sentence the accused may petition the adjutant general for a new trial on the grounds of newly discovered evidence or fraud on the court-martial.

**322.074 Article 74—Remission and suspension.**

(1) Any authority competent to convene, for the command in which the accused is serving or assigned, a court of the kind that imposed the sentence may remit or suspend any part or amount of the unexecuted part of any sentence, including all uncollected forfeitures other than a sentence approved by the governor.

(2) The governor may, for good cause, substitute an administrative form of discharge for a discharge or dismissal executed in accordance with the sentence of a court-martial.

**322.075 Article 75—Restoration.** (1) Under regulations as may be prescribed, all rights, privileges, and

property affected by an executed part of a court-martial sentence which has been set aside or disapproved, except an executed dismissal or discharge, shall be restored unless a new trial or rehearing is ordered and the executed part is included in a sentence imposed upon the new trial or rehearing.

(2) If a previously executed sentence of dishonorable or bad-conduct discharge is not imposed on a new trial, the governor may substitute therefore a form of discharge authorized for administrative issuance unless the accused is to serve out the remainder of the accused's enlistment.

(3) If a previously executed sentence of dismissal is not imposed on a new trial, the governor may substitute a form of discharge authorized for administrative issue, and the commissioned officer dismissed by that sentence may be reappointed by the governor alone to a commissioned grade and rank as in the opinion of the governor that former officer would have attained had he or she not been dismissed. The reappointment of a former officer shall be without regard to the existence of a vacancy and shall affect the promotion status of other officers only insofar as the governor may direct. All time between the dismissal and the reappointment shall be considered as actual service for all purposes, including the right to pay and allowances.

**322.076 Article 76—Finality of proceedings, findings, and sentences.** The appellate review of records of trial provided by this code, the proceedings, findings, and sentences of courts-martial as approved, reviewed, or affirmed as required by this code, and all dismissals and discharges carried into execution under sentences by courts-martial following approval, review, or affirmation as required by this code, are final and conclusive. Orders publishing the proceedings of courts-martial and all action taken subject to those proceedings are binding upon all departments, courts, agencies, and officers of the United States and the several states, subject only to action upon a petition for a new trial as provided in s. 322.073 and to action under s. 322.074.

**322.0763 Article 76a—Leave required to be taken pending review of certain court-martial convictions.** Under regulations prescribed, an accused who has been sentenced by a court-martial may be required to take leave pending completion of action under this section if the sentence, as approved under s. 322.060, includes an unsuspended dismissal or an unsuspended dishonorable or bad-conduct discharge. The accused may be required to begin leave on the date on which the sentence is approved under s. 322.060 or at any time after that date, and any leave may be continued until the date on which action under this section is completed or may be terminated at any earlier time.

**322.0767 Article 76b—Competency; commitment for examination and treatment.** (1) The following applies to persons who are incompetent to stand trial:

(a) If a person subject to a general court-martial is found to lack substantial mental capacity to understand the proceedings or assist in his or own defense and the military judge determined that the person is likely to become competent within the period specified under s. 971.14(5) (a), the court-martial convening authority for the person shall commit the person to the custody of the department of health and family services under s. 971.14 (5). If the military judge determines that the defendant is not likely to become competent in the time period specified under s. 971.14(5), the military judge shall suspend or terminate the general court-martial.

(b) The department of health and family services shall submit all reports that are required under s. 971.14 (5) (b) and that pertain to a person subject to a commitment order under par. (a) to the court-martial.

(c) Upon receiving a report under s. 971.17 (5) (b), the court-martial shall make a determination as to whether the person has become competent. If the court-martial determines that the defendant has become competent, the court-martial shall terminate the commitment to the department of health and family services and resume the general court-martial. If the court-martial determines that the person is making sufficient progress toward becoming competent, the commitment shall continue. If the court-martial determines that the person is not likely to become competent to proceed in the time period specified under s. 971.14 (5) (a), the court-martial shall suspend or terminate the commitment order under this subsection.

(d) If a person who has been restored to competency again becomes incompetent, the maximum commitment period under s. 971.14 (5) (a) shall be as provided under s. 971.14 (5) (d).

(e) If the court-martial determines under par. (a) or (d) that the person is not likely to become competent to proceed, the court-martial may order that the person be delivered to a facility under s. 51.15 (2), an approved public treatment facility under s. 51.45 (2), or an appropriate medical or protective placement facility.

(f) If the person is discharged from the military forces while subject to a commitment order under par. (a), the court-martial shall suspend or terminate the commitment order and may order that the person be delivered to a facility under s. 51.15 (2), an approved public treatment facility under s. 51.45 (2), or an appropriate medical or protective placement facility.

(2) The following applies to persons who are found not guilty by reason of mental disease or defect:

(a) If a court-martial finds a person not guilty by reason of mental disease or defect, the court-martial shall commit the person to the custody of the department of health and family services for a period not to exceed that described under s. 971.17 (1).

(b) Using the standard under s. 971.17 (3) (a), the court-martial shall determine whether the commitment

order under par. (a) shall specify institutional care or conditional release.

(c) The court-martial has the same authority as a circuit court has under s. 971.17 (2) to order the department of health and family services to conduct a predisposition investigation using the procedure in s. 972.15 or a mental examination as provided under s. 971.17 (2) (b), (c), and (e) to assist the court-martial in determining whether to place the person in institutional care or to conditionally release the person.

(d) If the court-martial specifies institutional care, the department of health and family services shall place the person in an institution as provided under s. 971.17 (3) (c). If the court-martial specifies conditional release, the department of health and family services, in conjunction with the person's county of residence, shall develop a plan for conditional release as provided under s. 971.17 (3) (d).

(e) After the court-martial enters an order under this subsection and transfers custody of a person to the department of health and family services, the person shall be subject to s. 971.17 and the circuit court for the county in which the person is institutionalized or where the person is placed on conditional release shall have jurisdiction in proceedings under s. 971.17.

#### SUBCHAPTER X PUNITIVE ARTICLES

**322.077 Article 77—Principals.** Any person who either commits an offense punishable by this code, or aids, abets, counsels, commands, or procures its commission, or causes an act to be done which if directly performed by him or her would be punishable is a principal.

**322.078 Article 78—Accessory after the fact.** Any person who, knowing that an offense punishable by this code has been committed, receives, comforts, or assists the offender in order to hinder or prevent his or her apprehension, trial, or punishment shall be punished as a court-martial may direct.

**322.079 Article 79—Conviction of lesser included offense.** An accused may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included.

**322.080 Article 80—Attempts.** (1) An act, done with specific intent to commit an offense under this code, amounting to more than mere preparation and tending, even though failing, to effect its commission, is an attempt to commit that offense.

(2) Any person who attempts to commit any offense punishable by this code shall be punished as a court-martial may direct, unless otherwise specifically prescribed.

(3) Any person may be convicted of an attempt to commit an offense although it appears on the trial that the offense was consummated.

**322.081 Article 81—Conspiracy.** Any person who conspires with any other person to commit an offense



under this code shall, if one or more of the conspirators does an act to effect the object of the conspiracy, be punished as a court-martial may direct.

**322.082 Article 82—Solicitation.** (1) Any person who solicits or advises another or others to desert in violation of s. 322.085 or mutiny in violation of s. 322.094 shall, if the offense solicited or advised is attempted or committed, be punished with the punishment provided for the commission of the offense, but, if the offense solicited or advised is not committed or attempted, the person shall be punished as a court-martial may direct.

(2) Any person who solicits or advises another or others to commit an act of misbehavior before the enemy in violation of s. 322.099 or sedition in violation of s. 322.094 shall, if the offense solicited or advised is committed, be punished with the punishment provided for the commission of the offense, but, if the offense solicited or advised is not committed, the person shall be punished as a court-martial may direct.

**322.083 Article 83—Fraudulent enlistment, appointment, or separation.** Any person who does any of the following shall be punished as a court-martial may direct:

(1) Procures his or her own enlistment or appointment in the state military forces by knowingly false representation or deliberate concealment as to his or her qualifications for that enlistment or appointment and receives pay or allowances there under.

(2) Procures his or her own separation from the state military forces by knowingly false representation or deliberate concealment as to his or her eligibility for that separation.

**322.084 Article 84—Unlawful enlistment, appointment, or separation.** Any person who effects an enlistment or appointment in or a separation from the state military forces of any person who is known to him or her to be ineligible for that enlistment, appointment, or separation because it is prohibited by law, regulation, or order shall be punished as a court-martial may direct.

**322.085 Article 85—Desertion.** (1) Any member of the state military forces is guilty of desertion if he or she does any of the following:

(a) Without authority goes or remains absent from his or her unit, organization, or place of duty with intent to remain away there from permanently.

(b) Quits his or her unit, organization, or place of duty with intent to avoid hazardous duty or to shirk important service.

(c) Without being regularly separated from one of the state military forces enlists or accepts an appointment in the same or another one of the state military forces, or in one of the armed forces of the United States, without fully disclosing the fact that he or she has not been regularly separated, or enters any foreign armed service except when authorized by the United States.

(2) Any commissioned officer of the state military forces who, after tender of his or her resignation and before notice of its acceptance, quits his or her post or proper duties without leave and with intent to remain away there from permanently is guilty of desertion.

(3) Any person found guilty of desertion or attempt to desert shall be punished, if the offense is committed in time of war, by confinement of not more than 10 years or other punishment as a court-martial may direct, but if the desertion or attempt to desert occurs at any other time, by punishment as a court-martial may direct.

**322.086 Article 86—Absence without leave.** Any person who, without authority, does any of the following shall be punished as a court-martial may direct:

(1) Fails to go to his or her appointed place of duty at the time prescribed.

(2) Goes from that place.

(3) Absents himself or herself or remains absent from his or her unit, organization, or place of duty at which he or she is required to be at the time prescribed.

**322.087 Article 87—Missing movement.** Any person who through neglect or design misses the movement of a ship, aircraft, or unit with which he or she is required in the course of duty to move shall be punished as a court-martial may direct.

**322.088 Article 88—Contempt toward officials.** Any commissioned officer who uses contemptuous words against the president, the vice-president, members of congress, the secretary of defense, the secretary of a military department, the secretary of homeland security, or the governor or legislature of the state of Wisconsin shall be punished as a court-martial may direct.

**322.089 Article 89—Disrespect toward superior commissioned officer.** Any person who behaves with disrespect toward his or her superior commissioned officer shall be punished as a court-martial may direct.

**322.090 Article 90—Assaulting or willfully disobeying superior commissioned officer.** A court-martial may direct punishment on any person who does any of the following:

(1) Strikes his or her superior commissioned officer or draws or lifts up any weapon or offers any violence against him or her while he or she is in the execution of his or her office.

(2) Willfully disobeys a lawful command of his or her superior commissioned officer.

**322.091 Article 91—Insubordinate conduct toward warrant officer, noncommissioned officer, or petty officer.** Any warrant officer or enlisted member who does any of the following shall be punished as a court-martial may direct:

(1) Strikes or assaults a warrant officer, noncommissioned officer, or petty officer, while that officer is in the execution of his or her office.

(2) Willfully disobeys the lawful order of a warrant officer, noncommissioned officer, or petty officer.

(3) Treats with contempt or is disrespectful in language or deportment toward a warrant officer, noncommissioned officer, or petty officer, while that officer is in the execution of his or her office.

**322.092 Article 92—Failure to obey order or regulation.** Any person who does any of the following shall be punished as a court-martial may direct:

(1) Violates or fails to obey any lawful general order or regulation.

(2) Having knowledge of any other lawful order issued by a member of the state military forces, which it is his or her duty to obey, fails to obey the order.

(3) Is derelict in the performance of his or her duties.

**322.093 Article 93—Cruelty and maltreatment.** Any person who is guilty of cruelty toward, or oppression or maltreatment of, any person subject to his or her orders shall be punished as a court-martial may direct.

**322.094 Article 94—Mutiny or sedition.** (1) Any person who does any of the following shall be punished as a court-martial may direct:

(a) With intent to usurp or override lawful military authority, refuses, in concert with any other person, to obey orders or otherwise do his or her duty or creates any violence or disturbance is guilty of mutiny.

(b) With intent to cause the overthrow or destruction of lawful civil authority, creates, in concert with any other person, revolt, violence, or other disturbance against that authority is guilty of sedition.

(c) Fails to do his or her utmost to prevent and suppress a mutiny or sedition being committed in his or her presence, or fails to take all reasonable means to inform his or her superior commissioned officer or commanding officer of a mutiny or sedition which he or she knows or has reason to believe is taking place, is guilty of a failure to suppress or report a mutiny or sedition.

(2) A person who is found guilty of attempted mutiny, mutiny, sedition, or failure to suppress or report a mutiny or sedition shall be punished as a court-martial may direct.

**322.095 Article 95—Resistance, flight, breach of arrest, and escape.** Any person who does any of the following shall be punished as a court-martial may direct:

(1) Resists apprehension.

(2) Flees from apprehension.

(3) Breaks arrest.

(4) Escapes from custody or confinement.

**322.096 Article 96—Releasing prisoner without proper authority.** Any person who, without proper authority, releases any prisoner committed to his or her charge, or who through neglect or design causes any prisoner to escape, shall be punished as a court-martial may direct, whether or not the prisoner was committed in strict compliance with law.

**322.097 Article 97—Unlawful detention.** Any person who, except as provided by law or regulation, appre-

hends, arrests, or confines any person shall be punished as a court-martial may direct.

**322.098 Article 98—Noncompliance with procedural rules.** Any person who does any of the following shall be punished as a court-martial may direct:

(1) Is responsible for unnecessary delay in the disposition of any case of a person accused of an offense under this code.

(2) Knowingly and intentionally fails to enforce or comply with any provision of this code regulating the proceedings before, during, or after trial of an accused.

**322.099 Article 99—Misbehavior before the enemy.** Any person who before or in the presence of the enemy does any of the following shall be punished as a court-martial may direct:

(1) Runs away.

(2) Shamefully abandons, surrenders, or delivers up any command, unit, place, or military property which it is his or her duty to defend.

(3) Through disobedience, neglect, or intentional misconduct endangers the safety of any command, unit, place, or military property.

(4) Casts away his or her arms or ammunition.

(5) Is guilty of cowardly conduct.

(6) Quits his or her place of duty to plunder or pillage.

(7) Causes false alarms in any command, unit, or place under control of the armed forces of the United States or the state military forces.

(8) Willfully fails to do his or her utmost to encounter, engage, capture, or destroy any enemy troops, combatants, vessels, aircraft, or any other thing, which it is his or her duty so to encounter, engage, capture, or destroy.

(9) Does not afford all practicable relief and assistance to any troops, combatants, vessels, or aircraft of the armed forces belonging to the United States or their allies, to the state, or to any other state, when engaged in battle.

**322.100 Article 100—Subordinate compelling surrender.** Any person who compels or attempts to compel the commander of any of the state military forces of the State, or of any other state, place, vessel, aircraft, or other military property, or of any body of members of the armed forces, to give it up to an enemy or to abandon it, or who strikes the colors or flag to an enemy without proper authority, shall be punished as a court-martial may direct.

**322.101 Article 101—Improper use of countersign.** Any person who in time of war discloses the parole or countersign to any person not entitled to receive it or who gives to another, who is entitled to receive and use the parole or countersign, a different parole or countersign from that which, to his or her knowledge, he or she was authorized and required to give, shall be punished as a court-martial may direct.

**322.102 Article 102—Forcing a safeguard.** Any person who forces a safeguard shall be punished as a court-martial may direct. “Forcing a safeguard” means performing any act in violation of the protection of a detachment, guard, or detail posted by a commander for protection.

**322.103 Article 103—Captured or abandoned property.** (1) All persons subject to this code shall secure all public property taken for the service of the United States or the state, or of any other state, and shall give notice and turn over to the proper authority without delay all captured or abandoned property in their possession, custody, or control.

(2) Any person subject to this code who does any of the following shall be punished as a court-martial may direct:

- (a) Fails to carry out the duties prescribed in sub. (1).
- (b) Buys, sells, trades, or in any way deals in or disposes of taken, captured, or abandoned property, whereby he or she receives or expects any profit, benefit, or advantage to himself or herself or another directly or indirectly connected with himself or herself.
- (c) Engages in looting or pillaging.

**322.104 Article 104—Aiding the enemy.** Any person who does any of the following shall be punished as a court-martial may direct:

- (1) Aids, or attempts to aid, the enemy with arms, ammunition, supplies, money, or other things.
- (2) Without proper authority, knowingly harbors or protects or gives intelligence to, or communicates or corresponds with or holds any intercourse with the enemy, either directly or indirectly.

**322.105 Article 105—Misconduct as prisoner.** Any person who, while in the hands of the enemy in time of war does any of the following shall be punished as a court-martial may direct:

- (1) For the purpose of securing favorable treatment by his or her captors acts without proper authority in a manner contrary to law, custom, or regulation, to the detriment of others of whatever nationality held by the enemy as civilian or military prisoners.
- (2) While in a position of authority over such persons maltreats them without justifiable cause.

**322.107 Article 107—False official statements.** Any person who, with intent to deceive, signs any false record, return, regulation, order, or other official document made in the line of duty, knowing it to be false, or makes any other false official statement made in the line of duty, knowing it to be false, shall be punished as a court-martial may direct.

**322.108 Article 108—Military property — Loss, damage, destruction, or wrongful disposition.** Any person who, without proper authority, does any of the following shall be punished as a court-martial may direct:

- (1) Sells or otherwise disposes of any military property of the United States, the State, or of any state.

(2) Willfully or through neglect damages, destroys, or loses any military property of the United States, the state, or of any state.

(3) Willfully or through neglect suffers to be lost, damaged, destroyed, sold, or wrongfully disposed of any military property of the United States, the state, or of any state.

**322.109 Article 109—Property other than military property — Waste, spoilage, or destruction.** Any person who willfully or recklessly wastes, spoils, or otherwise willfully and wrongfully destroys or damages any property other than military property of the United States, the State, or of any state, shall be punished as a court-martial may direct.

**322.110 Article 110—Improper hazarding of vessel.** (1) Any person who willfully and wrongfully hazards or suffers to be hazarded any vessel of the armed forces of the United States, this state, or any other state military forces shall suffer punishment as a court-martial may direct.

(2) Any person who negligently hazards or suffers to be hazarded any vessel of the armed forces of the United States, the state, or any other state, state military forces shall be punished as a court-martial may direct.

**322.111 Article 111—Drunken or reckless operation of an all-terrain vehicle, vehicle, snowmobile, aircraft, or vessel.** Any person who violates s. 23.33 (3) (a) or (4c), 30.68, 30.681, 114.09, 346.62, 346.63 (1) or (2), 350.10 (1) (b), 350.101, 940.25, or 940.09 where the offense involved the operation or physical control of an aircraft, all-terrain vehicle, snowmobile, vehicle or vessel on or off a highway shall be punished as the court-martial may direct.

**322.112 Article 112—Drunk on duty.** Any person other than a sentinel or lookout, who is found drunk on duty, shall be punished as a court-martial may direct.

**322.1125 Article 112a—Violations regarding controlled substances.** (1) Any person who wrongfully uses, possesses, manufactures, distributes, imports into the customs territory of the United States, exports from the United States, or introduces into an installation, vessel, vehicle, or aircraft used by or under the control of the armed forces of the United States, the state, or of any other state, state military forces a controlled substance, as defined in s. 961.01 (4) shall be punished as a court-martial may direct.

**322.113 Article 113—Misbehavior of sentinel.** Any sentinel or look-out who is found drunk or sleeping upon his or her post or leaves it before being regularly relieved, shall be punished, if the offense is committed in time of war, by confinement of not more than 10 years or other punishment as a court-martial may direct, but if the offense is committed at any other time, by punishment as a court-martial may direct.

**322.114 Article 114—Dueling.** Any person who fights or promotes, or is concerned in or connives at fight-

ing a duel, or who, having knowledge of a challenge sent or about to be sent, fails to report the fact promptly to the proper authority.

**322.115 Article 115—Malingering.** Any person who for the purpose of avoiding work, duty, or service does any of the following shall be punished as a court-martial may direct:

(1) Feigns illness, physical disablement, mental lapse, or derangement.

(2) Intentionally inflicts self-injury.

**322.116 Article 116—Riot or breach of peace.** Any person who causes or participates in any riot or breach of the peace shall be punished as a court-martial may direct.

**322.117 Article 117—Provoking speeches or gestures.** Any person who uses provoking or reproachful words or gestures towards any other person subject to this code shall be punished as a court-martial may direct.

**322.120 Article 120—Rape and carnal knowledge.** (1) Any person who commits an act of sexual intercourse, by force and without consent, is guilty of rape and shall be punished as a court-martial may direct.

(2) Any person subject to this chapter who, under circumstances not amounting to rape, commits an act of sexual intercourse with a person who is not that person's spouse, and who has not attained the age of 16 years; is guilty of carnal knowledge and shall be punished as a court-martial may direct.

(3) Penetration, however slight, is sufficient to complete either of these offenses.

(4) In a prosecution under sub. (2), it is an affirmative defense if all of the following conditions are established:

(a) The person with whom the accused committed the act of sexual intercourse had at the time of the alleged offense attained the age of 12 years.

(b) The accused reasonably believed that that person had at the time of the alleged offense attained the age of 16 years.

(5) The accused has the burden of proving a defense under sub. (4) by a preponderance of the evidence.

**322.121 Article 121—Larceny and wrongful appropriation.** Any person who wrongfully takes, obtains, or withholds, by any means, from the possession of the owner or of any other person any money, personal property, or section of value of any kind if any of the following apply shall be punished as a court-martial may direct:

(1) With intent permanently to deprive or defraud another person of the use and benefit of property or to appropriate it to his or her own use or the use of any person other than the owner, steals that property and is guilty of larceny.

(2) With intent temporarily to deprive or defraud another person of the use and benefit of property or to appropriate it to his or her own use or the use of any person other than the owner, is guilty of wrongful appropriation.

**322.122 Article 122—Robbery.** Any person who with intent to steal takes anything of value from a person or in the presence of another person, against his or her will, by means of force or violence or fear of immediate or future injury to his or her person or property or to the person or property of a relative or member of his or her family or of anyone in his or her company at the time of the robbery, is guilty of robbery and shall be punished as a court-martial may direct.

**322.123 Article 123—Forgery.** Any person who, with intent to defraud who does any of the following shall be punished as a court-martial may direct:

(1) Falsely makes or alters any signature, to, or any part of, any writing which would, if genuine, apparently impose a legal liability on another or change his or her legal right or liability to his or her prejudice.

(2) Utters, offers, issues, or transfers a writing, known by him or her to be so made or altered; is guilty of forgery.

**322.1235 Article 123a—Making, drawing, or uttering check, draft, or order without sufficient funds.** Any person who does any of the following shall be punished as a court-martial may direct:

(1) Procures any section or thing of value, with intent to defraud.

(2) Pays any past due obligation, or for any other purpose, with intent to deceive; makes, draws, utters, or delivers any check, draft, or order for the payment of money upon any bank or other depository, knowing at the time that the maker or drawer has not or will not have sufficient funds in, or credit with, the bank or other depository for the payment of that check, draft, or order in full upon its presentment. The making, drawing, uttering, or delivering by a maker or drawer of a check, draft, or order, payment of which is refused by the drawee because of insufficient funds of the maker or drawer in the drawee's possession or control, is prima facie evidence of his or her intent to defraud or deceive and of his or her knowledge of insufficient funds in, or credit with, that bank or other depository, unless the maker or drawer pays the holder the amount due within 5 days after receiving notice, orally or in writing, that the check, draft, or order was not paid on presentment.

(3) In this section, the word "credit" means an arrangement or understanding, express or implied, with the bank or other depository for the payment of that check, draft, or order.

**322.124 Article 124—Maiming.** Any person who, with intent to injure, disfigure, or disable, inflicts on the person of another an injury which does any of the following shall be punished as a court-martial may direct:

(1) Seriously disfigures his or her person by a mutilation.

(2) Destroys or disables any member or organ of his or her body.



(3) Seriously diminishes his or her physical vigor by the injury of any member or organ.

**322.126 Article 126—Arson.** Any person who does any of the following shall be punished as a court-martial may direct:

(1) Willfully and maliciously burns or sets on fire an inhabited dwelling, or any other structure, movable or immovable, in which the offender knows there is at the time a human being, is guilty of aggravated arson.

(2) Willfully and maliciously burns or sets fire to the property of another, except as provided in sub. (1), is guilty of simple arson.

**322.127 Article 127—Extortion.** Any person who communicates threats to another person with the intention of obtaining anything of value or any acquittance, advantage, or immunity is guilty of extortion and shall be punished as a court-martial may direct.

**322.128 Article 128—Assault.** Any person who does any of the following shall be punished as a court-martial may direct:

(1) Attempts or offers with unlawful force or violence to do bodily harm to another person, whether or not the attempt or offer is consummated, is guilty of assault.

(2) Commits an assault with a dangerous weapon or other means or force likely to produce death or grievous bodily harm is guilty of aggravated assault.

(3) Commits an assault and intentionally inflicts grievous bodily harm with or without a weapon is guilty of aggravated assault.

**322.129 Article 129—Burglary.** Any person who, with intent to commit an offense punishable under ss. 322.120 to 322.128, breaks and enters, in the nighttime, the dwelling house of another, is guilty of burglary and shall be punished as a court-martial may direct.

**322.130 Article 130—Housebreaking.** Any person who unlawfully enters the building or structure of another with intent to commit a criminal offense is guilty of housebreaking and shall be punished as a court-martial may direct.

**322.131 Article 131—Perjury.** Any person who in a judicial proceeding or in a course of justice willfully and corruptly does any of the following shall be punished as a court-martial may direct:

(1) Upon a lawful oath or in any form allowed by law to be substituted for an oath, gives any false testimony material to the issue or matter of inquiry.

(2) In any declaration, certificate, verification, or statement under penalty or perjury as permitted under 28 USC 1746, subscribes any false statement material to the issue or matter of inquiry.

**322.132 Article 132—Frauds against the government.** Any person who does any of the following knowing it to be false or fraudulent shall be punished as a court-martial may direct:

(1) For the purpose of obtaining the approval, allowance, or payment of any claim against the United States, the state, or of any state, or any officer:

(a) Makes or presents a claim.

(b) Makes or uses any writing or other paper.

(c) Makes any oath, affirmation or certification to any fact or to any writing or other paper.

(2) For the purpose of defrauding the United States, the state, or of any state, or any officer:

(a) Forges or counterfeits any signature upon any writing or other paper, or uses any signature knowing it to be forged or counterfeited.

(b) Delivers to any person having authority to receive it, any amount less than that for which he or she receives a certificate or receipt.

(c) Makes or delivers to any person, a writing without having full knowledge of the truth of the statements contained in the writing.

**322.133 Article 133—Conduct unbecoming an officer and a gentleman.** Any commissioned officer, cadet, candidate, or midshipman who is convicted of conduct unbecoming an officer and a gentleman shall be punished as a court-martial may direct.

**322.134 Article 134—General section.** Though not specifically mentioned in this code, all disorders and neglects to the prejudice of good order and discipline in the state military forces and all conduct of a nature to bring discredit upon the state military forces shall be taken cognizance of by a court-martial and punished at the discretion of a military court. However, where a crime constitutes an offense that violates both this code and the criminal laws of the state where the offense occurs or criminal laws of the United States, jurisdiction of the military court shall be determined under s. 322.002 (2).

## SUBCHAPTER XI

### MISCELLANEOUS PROVISIONS

**322.135 Article 135—Courts of inquiry.** (1)

Courts of inquiry to investigate any matter of concern to the state military forces may be convened by any person authorized to convene a general court-martial, whether or not the persons involved has requested an inquiry.

(2) A court of inquiry consists of 3 or more commissioned officers. For each court of inquiry, the convening authority shall also appoint counsel for the court.

(3) Any person whose conduct is subject to inquiry shall be designated as a party. Any person subject to this code who has a direct interest in the subject of inquiry has the right to be designated as a party upon request to the court. Any person designated as a party shall be given due notice and has the right to be present, to be represented by counsel, to cross-examine witnesses, and to introduce evidence.

(4) Members of a court of inquiry may be challenged by a party, but only for cause stated to the court.

(5) The members, counsel, the reporter, and interpreters of courts of inquiry shall take an oath to faithfully perform their duties.

(6) Witnesses may be summoned to appear and testify and be examined before courts of inquiry, as provided for courts-martial.

(7) Courts of inquiry shall make findings of fact but may not express opinions or make recommendations unless required to do so by the convening authority.

(8) Each court of inquiry shall keep a record of its proceedings, which shall be authenticated by the signatures of the president and counsel for the court and forwarded to the convening authority. If the record cannot be authenticated by the president, it shall be signed by a member in lieu of the president. If the record cannot be authenticated by the counsel for the court, it shall be signed by a member in lieu of the counsel.

**322.136 Article 136—Authority to administer oaths and to act as notary.** (1) The following persons may administer oaths for the purposes of military administration, including military justice:

- (a) All judge advocates.
- (b) All summary courts-martial.
- (c) All adjutants, assistant adjutants, acting adjutants, and personnel adjutants.
- (d) All commanding officers of the naval militia.
- (e) All other persons designated by regulations of the armed forces of the United States or by statute.

(2) The following persons may administer oaths necessary in the performance of their duties:

- (a) The president, military judge, and trial counsel for all general and special courts-martial.
- (b) The president and the counsel for the court of any court of inquiry.
- (c) All officers designated to take a deposition.
- (d) All persons detailed to conduct an investigation.
- (e) All recruiting officers.
- (f) All other persons designated by regulations of the armed forces of the United States or by statute.

(3) The signature without seal of any of the above persons, together with the title of his or her office, is prima facie evidence of the person's authority.

**322.137 Article 137—Articles to be available.** The code and the manual for courts-martial shall be made available to a member of the state military forces, upon request by the member, for the member's personal examination.

**322.138 Article 138—Complaints of wrongs.** Any member of the state military forces who believes himself or herself wronged by a commanding officer, and who, upon due application to that commanding officer, is refused redress, may complain to any superior commissioned officer, who shall forward the complaint to the

officer exercising general court-martial jurisdiction over the officer against whom it is made. The officer exercising general court-martial jurisdiction shall examine into the complaint and take proper measures for redressing the wrong complained of; and shall, as soon as possible, send to the adjutant general a true statement of that complaint, with the proceedings.

**322.139 Article 139—Redress of injuries to property.** (1) Whenever complaint is made to any commanding officer that willful damage has been done to the property of any person or that the person's property has been wrongfully taken by members of the state military forces, that person may, under the regulations prescribed, convene a board to investigate the complaint. The board shall consist of from one to 3 commissioned officers and, for the purpose of that investigation, it has power to summon witnesses and examine them upon oath, to receive depositions or other documentary evidence, and to assess the damages sustained against the responsible parties. The assessment of damages made by the board is subject to the approval of the commanding officer, and in the amount approved by that officer shall be charged against the pay of the offenders. The order of the commanding officer directing charges herein authorized is conclusive on any disbursing officer for payment to the injured parties of the damages so assessed and approved.

(2) If the offenders cannot be ascertained, but the organization or detachment to which they belong is known, charges totaling the amount of damages assessed and approved may be made in proportion as may be considered just upon the individual members who are shown to have been present at the scene at the time the damages complained of were inflicted, as determined by the approved findings of the board.

**322.140 Article 140—Delegation by the governor.** The governor may delegate any authority vested in the governor under this code, and provide for the sub-delegation of any authority, except the power given the governor by s. 322.022.

**322.141 Article 141—Payment of fees, costs, and expenses.** The fees and authorized travel expenses of all witnesses, experts, victims, court reporters, and interpreters, fees for the service of process, the costs of collection, apprehension, detention and confinement, and all other necessary expenses of prosecution and the administration of military justice, not otherwise payable by any other source, shall be paid by the Wisconsin national guard.

**322.142 Article 142—Payment of fines and disposition.** (1) Fines imposed by a military court or through imposition of nonjudicial punishment may be paid to the state and delivered to the court or imposing officer, or to a person executing their process. Fines may be collected in the following manner:

- (a) By cash, cashier's check, or money order.

(b) By retention of any pay or allowances due or to become due the person fined from any state or the United States.

(c) By garnishment or levy, together with costs, on the wages, goods, and chattels of a person delinquent in paying a fine, as provided by law.

(2) Any sum so received or retained shall be deposited with the Wisconsin national guard or to where the court so directs.

(3) Nothing in this code shall be construed to prohibit restitution.

**322.143 Article 143—Uniformity of interpretation.** This code shall be so construed as to effectuate its general purpose to make it uniform, so far as practical, with the 10 USC ch. 47.

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**322.144 Article 144—Immunity for action of military courts.** All persons acting under the provisions of this code, whether as a member of the military or as a civilian, shall be immune from any personal liability for any of the acts or omissions that they did or failed to do as part of their duties under this code.

**SECTION 228.** Laws of 1969, chapter 20, section 10 is repealed.

**SECTION 229. Initial applicability.**

(1) The treatment of section 302.31 (1m) and chapter 322 of the statutes and SECTION 228 of this act first apply to acts or omissions that occur on the effective date of this subsection.